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Attorneys for Defendants
Facebook, Inc., Mark Zuckerberg, Christopher Cox, Javier
Olivan, Samuel Lessin, Michael Vernal, and Ilya Sukhar

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO

SIX4THREE, LLC, a Delaware limited liability
company,

Plaintiff,

v.

FACEBOOK, INC., a Delaware corporation;
MARK ZUCKERBERG, an individual;
CHRISTOPHER COX, an individual;
JAVIER OLIVAN, an individual;
SAMUEL LESSIN, an individual;
MICHAEL VERNAL, an individual;
ILYA SUKHAR, an individual; and
DOES 1-50, inclusive,

Defendants.

Case No. CIV 533328

**Assigned for all purposes to Hon. V. Raymond
Swope, Dept. 23**

**DECLARATION OF LAURA E. MILLER IN
SUPPORT OF DEFENDANT FACEBOOK,
INC.'S MOTION TO OPEN DISCOVERY
AND TO COMPEL**

Date: February 7, 2019
Time: 9:00 a.m.
Dept: 23 (Complex Civil Litigation)
Judge: Honorable V. Raymond Swope

FILING DATE: April 10, 2015
TRIAL DATE: April 25, 2019

1 I, Laura E. Miller, declare as follows:

2 1. I am an attorney at law licensed to practice in the state of California. I am an attorney
3 with the law firm of Durie Tangri LLP, counsel for Defendant Facebook, Inc. in this matter. I make this
4 Declaration from personal knowledge, and if called to testify, I could and would testify competently
5 thereto.

6 2. Attached hereto as **Exhibit 1** is a true and correct copy of pages excerpted from the
7 Reporter's Transcript of Proceeding in this matter dated November 30, 2018.

8 3. Attached hereto as **Exhibit 2** is a true and correct copy of documents produced in this
9 matter by Birnbaum & Godkin, LLP, counsel for Plaintiff Six4Three, bearing Bates numbers BG001353.
10 The unredacted version of this document has been lodged provisionally under seal.

11 4. Attached hereto as **Exhibit 3** is a true and correct copy of documents produced in this
12 matter by Plaintiff Six4Three bearing Bates numbers SIX4THREE000015915-18.

13 5. Attached hereto as **Exhibit 4** is a true and correct copy of pages excerpted from the
14 Reporter's Transcript of Proceedings in this matter on December 7, 2018.

15 6. Attached hereto as **Exhibit 5** is a true and correct copy of pages excerpted from the
16 transcript of the deposition of Thomas Scaramellino taken in this matter on April 21, 2017. The
17 unredacted version of this document has been lodged provisionally under seal.

18 7. Attached hereto as **Exhibit 6** is a true and correct copy of documents produced in this
19 matter by Birnbaum & Godkin, LLP, counsel for Plaintiff Six4Three, bearing Bates numbers BG001308.
20 Private information, such as emails, addresses, and telephone numbers, has been redacted.

21 8. Attached hereto as **Exhibit 7** is a true and correct copy of documents produced in this
22 matter by Birnbaum & Godkin, LLP, counsel for Plaintiff Six4Three, bearing Bates numbers BG002172.
23 Private information, such as emails, addresses, and telephone numbers, has been redacted.

24 9. Attached hereto as **Exhibit 8** is a true and correct copy of documents produced in this
25 matter by Birnbaum & Godkin, LLP, counsel for Plaintiff Six4Three, bearing Bates numbers BG002165.
26 Private information, such as emails, addresses, and telephone numbers, has been redacted.

1 10. Attached hereto as **Exhibit 9** is a true and correct copy of the Declaration of David S.
2 Godkin in Opposition to Facebook's Motions to Compel with Exhibit A Redacted for Public Filing, filed
3 in this matter on June 19, 2017.

4 11. Attached hereto as **Exhibit 10** is a true and correct copy of the Order on Defendant's
5 Motion to Compel Production of Withheld Scaramellino Communications issued in this matter on July
6 14, 2017.

7 12. Attached hereto as **Exhibit 11** is a true and correct copy of the Order on Six4Three's
8 Motion for Protective Order and Facebook's Motion for Protective Order issued in this matter on October
9 25, 2016.

10 13. Attached hereto as **Exhibit 12** is a true and correct copy of documents produced in this
11 matter by Birnbaum & Godkin, LLP, counsel for Plaintiff Six4Three, bearing Bates numbers BG000152.
12 The unredacted version of this document has been lodged provisionally under seal.

13 14. Attached hereto as **Exhibit 13** is a true and correct copy of documents produced in this
14 matter by Birnbaum & Godkin, LLP, counsel for Plaintiff Six4Three, bearing Bates numbers BG000154.
15 The unredacted version of this document has been lodged provisionally under seal.

16 15. Attached hereto as **Exhibit 14** is a true and correct copy of documents produced in this
17 matter by Birnbaum & Godkin, LLP, counsel for Plaintiff Six4Three, bearing Bates numbers BG000156.
18 The unredacted version of this document has been lodged provisionally under seal.

19 16. Attached hereto as **Exhibit 15** is a true and correct copy of documents produced in this
20 matter by Birnbaum & Godkin, LLP, counsel for Plaintiff Six4Three, bearing Bates numbers BG000716.
21 Private information, such as emails, addresses, and telephone numbers, has been redacted.

22 17. Attached hereto as **Exhibit 16** is a true and correct copy of documents produced in this
23 matter by Birnbaum & Godkin, LLP, counsel for Plaintiff Six4Three, bearing Bates numbers BG000425-
24 36. The unredacted version of this document has been lodged provisionally under seal.

25 18. Attached hereto as **Exhibit 17** is a true and correct copy of documents produced in this
26 matter by Birnbaum & Godkin, LLP, counsel for Plaintiff Six4Three, bearing Bates numbers BG007208.
27 Private information, such as emails, addresses, and telephone numbers, has been redacted.
28

1 19. Attached hereto as **Exhibit 18** is a true and correct copy of documents produced in this
2 matter by Birnbaum & Godkin, LLP, counsel for Plaintiff Six4Three, bearing Bates numbers BG006394.
3 Private information, such as emails, addresses, and telephone numbers, has been redacted.

4 20. Attached hereto as **Exhibit 19** is a true and correct copy of documents produced in this
5 matter by Birnbaum & Godkin, LLP, counsel for Plaintiff Six4Three, bearing Bates numbers BG006403.
6 Private information, such as emails, addresses, and telephone numbers, has been redacted.

7 21. Attached hereto as **Exhibit 20** is a true and correct copy of documents produced in this
8 matter by Birnbaum & Godkin, LLP, counsel for Plaintiff Six4Three, bearing Bates numbers BG002164.
9 Private information, such as emails, addresses, and telephone numbers, has been redacted.

10 22. Attached hereto as **Exhibit 21** is a true and correct copy of documents produced in this
11 matter by Birnbaum & Godkin, LLP, counsel for Plaintiff Six4Three, bearing Bates numbers BG002165.

12 23. Attached hereto as **Exhibit 22** is a true and correct copy of documents produced in this
13 matter by Birnbaum & Godkin, LLP, counsel for Plaintiff Six4Three, bearing Bates numbers BG000149.
14 Private information, such as emails, addresses, and telephone numbers, has been redacted.

15 24. Attached hereto as **Exhibit 23** is a true and correct copy of documents produced in this
16 matter by Birnbaum & Godkin, LLP, counsel for Plaintiff Six4Three, bearing Bates numbers BG000855.
17 Private information, such as emails, addresses, and telephone numbers, has been redacted.

18 25. Attached hereto as **Exhibit 24** is a true and correct copy of documents produced in this
19 matter by Birnbaum & Godkin, LLP, counsel for Plaintiff Six4Three, bearing Bates numbers BG001330.
20 The unredacted version of this document has been lodged provisionally under seal.

21 26. Attached hereto as **Exhibit 25** is a true and correct copy of documents produced in this
22 matter by Birnbaum & Godkin, LLP, counsel for Plaintiff Six4Three, bearing Bates numbers BG001357.
23 The unredacted version of this document has been lodged provisionally under seal.

24 27. Attached hereto as **Exhibit 26** is a true and correct copy of documents produced in this
25 matter by Birnbaum & Godkin, LLP, counsel for Plaintiff Six4Three, bearing Bates numbers BG001825.
26 The unredacted version of this document has been lodged provisionally under seal.

1 28. Attached hereto as **Exhibit 27** is a true and correct copy of documents produced in this
2 matter by Birnbaum & Godkin, LLP, counsel for Plaintiff Six4Three, bearing Bates numbers BG001860.
3 Private information, such as emails, addresses, and telephone numbers, has been redacted.

4 29. Attached hereto as **Exhibit 28** is a true and correct copy of documents produced in this
5 matter by Birnbaum & Godkin, LLP, counsel for Plaintiff Six4Three, bearing Bates numbers BG007476-
6 7906. Private information, such as emails, addresses, and telephone numbers, has been redacted.

7 30. Attached hereto as **Exhibit 29** is a true and correct copy of documents produced in this
8 matter by Birnbaum & Godkin, LLP, counsel for Plaintiff Six4Three, bearing Bates numbers BG006427.
9 Private information, such as emails, addresses, and telephone numbers, has been redacted.

10 31. Attached hereto as **Exhibit 30** is a true and correct copy of documents produced in this
11 matter by Birnbaum & Godkin, LLP, counsel for Plaintiff Six4Three, bearing Bates numbers BG006428.
12 Private information, such as emails, addresses, and telephone numbers, has been redacted.

13 32. Attached hereto as **Exhibit 31** is a true and correct copy of documents produced in this
14 matter by Birnbaum & Godkin, LLP, counsel for Plaintiff Six4Three, bearing Bates numbers BG002172.
15 Private information, such as emails, addresses, and telephone numbers, has been redacted.

16 33. Attached hereto as **Exhibit 32** is a true and correct copy of documents produced in this
17 matter by Birnbaum & Godkin, LLP, counsel for Plaintiff Six4Three, bearing Bates numbers BG000509.
18 The unredacted version of this document has been lodged provisionally under seal.

19 34. Attached hereto as **Exhibit 33** is a true and correct copy of the Notice of Deposition of
20 Theodore Kramer and Request for Production of Documents served on November 30, 2018.

21 35. Attached hereto as **Exhibit 34** is a true and correct copy of the Notice of Deposition of
22 Thomas Scaramellino and Request for Production of Documents served on November 30, 2018.

23 36. Attached hereto as **Exhibit 35** is a true and correct copy of the Notice of Deposition of
24 David Godkin and Request for Production of Documents served on November 30, 2018.

25 37. Attached hereto as **Exhibit 36** is a true and correct copy of the Notice of Deposition of
26 Stuart Gross and Request for Production of Documents served on November 30, 2018.

38. Attached hereto as **Exhibit 37** is a true and correct copy of documents produced in this matter by Birnbaum & Godkin, LLP, counsel for Plaintiff Six4Three, bearing Bates numbers BG006440. Private information, such as emails, addresses, and telephone numbers, has been redacted.

39. Attached hereto as **Exhibit 38** is a true and correct copy of documents produced in this matter by Birnbaum & Godkin, LLP, counsel for Plaintiff Six4Three, bearing Bates numbers BG000122-140. Private information, such as emails, addresses, and telephone numbers, has been redacted.

40. Attached hereto as **Exhibit 39** is a true and correct copy of the Objections and Responses to Facebook's the Notice of Deposition with Request for Production of Documents to Theodore Kramer served on December 2, 2018.

41. Attached hereto as **Exhibit 40** is a true and correct copy of the Objections and Responses to Facebook's the Notice of Deposition with Request for Production of Documents to Thomas Scaramellino served on December 2, 2018.

42. Attached hereto as **Exhibit 41** is a true and correct copy of the Objections and Responses to Facebook's the Notice of Deposition with Request for Production of Documents to David S. Godkin served on December 2, 2018.

43. Attached hereto as **Exhibit 42** is a true and correct copy of the Objections and Responses to Facebook's the Notice of Deposition with Request for Production of Documents to Stuart Gross served on December 2, 2018.

44. Attached hereto as **Exhibit 43** is a true and correct copy of pages excerpted from the Reporter's Transcript of Proceedings in this matter on December 17, 2018.

45. Attached hereto as **Exhibit 44** is a true and correct copy of Case Management Order No. 17, issued in this matter on December 17, 2018.

46. Attached hereto as **Exhibit 45** is a true and correct copy of the Declaration of Theodore Kramer in in (sic) Support of Plaintiff's Brief in Response to November 20, 2018 Order, filed in this matter on November 26, 2018.

47. Attached hereto as **Exhibit 46** is a true and correct copy of Declaration of David S. Godkin in Support of Plaintiff's Brief in Response to November 30, 2018 Order filed in this matter on November 26, 2018.

48. Attached hereto as **Exhibit 47** is a true and correct copy of the Declaration of Stuart G. Gross in Support of Plaintiff's Brief in Response to November 30, 2018 Order filed in this matter on November 26, 2018.

49. Attached hereto as **Exhibit 48** is a true and correct copy of documents produced in this matter by Birnbaum & Godkin, LLP, counsel for Plaintiff Six4Three, bearing Bates numbers BG006401. Private information, such as emails, addresses, and telephone numbers, has been redacted.

50. Attached hereto as **Exhibit 49** is a true and correct copy of the Declaration of Theodore Kramer Authenticating Exhibits to Declaration of Theodore Kramer in Support of Plaintiff's Brief in Response to November 20, 2018 Order filed in this matter on November 30, 2018.

51. Attached hereto as **Exhibit 50** is a true and correct copy of documents produced in this matter by Birnbaum & Godkin, LLP, counsel for Plaintiff Six4Three, bearing Bates numbers BG003750. The unredacted version of this document has been lodged provisionally under seal.

52. Mr. Scaramellino, Mr. Godkin, and Mr. Gross have not served individual objections to the discovery requests or deposition notices.

53. Facebook met and conferred with Six4Three on December 4 and 5, but Six4Three refused to engage regarding its privilege objection.

I declare under penalty of perjury under the laws of the State of California that the foregoing is to the best of my knowledge and belief true and correct.

Executed on January 8, 2019 in San Francisco, California.


LAURA E. MILLER

PROOF OF SERVICE

I am a citizen of the United States and resident of the State of California. I am employed in San Francisco County, State of California, in the office of a member of the bar of this Court, at whose direction the service was made. I am over the age of eighteen years, and not a party to the within action. My business address is 217 Leidesdorff Street, San Francisco, CA 94111.

On January 8, 2019, I served the following documents in the manner described below:

**DECLARATION OF LAURA E. MILLER IN SUPPORT OF DEFENDANT
FACEBOOK, INC.'S MOTION TO OPEN DISCOVERY AND TO COMPEL**

☒ BY ELECTRONIC SERVICE: By electronically mailing a true and correct copy through Durie Tangri's electronic mail system from cortega@durietangri.com to the email addresses set forth below.

On the following part(ies) in this action:

Stuart G. Gross
GROSS & KLEIN LLP
The Embarcadero, Pier 9, Suite 100
San Francisco, CA 94111
Telephone: 415-671-4628
sgross@grosskleinlaw.com

David S. Godkin
James Kruzer
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280 Summer Street
Boston, MA 02210
Telephone: 617-307-6100
godkin@birnbaumgodkin.com
kruzer@birnbaumgodkin.com

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Six4Three, LLC*

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*Attorney for Theodore Kramer and Thomas
Scaramellino (individual capacities)*

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Attorney for Birnbaum & Godkin, LLP

1 I declare under penalty of perjury under the laws of the United States of America that the
2 foregoing is true and correct. Executed on January 8, 2019, at San Francisco, California.

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5 Christina Ortega
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EXHIBIT 1

1 IN THE SUPERIOR COURTS OF THE STATE OF CALIFORNIA

2 IN AND FOR THE COUNTY OF SAN MATEO

3 ---000---

4
5 SIX4THREE, LLC, A DELAWARE
6 LIMITED LIABILITY COMPANY,

CERTIFIED TRANSCRIPT

7 PLAINTIFFS,

8 VS.

CASE NO. CIV533328

9 FACEBOOK, INC., A DELAWARE
10 CORPORATION, ET AL.,

11 DEFENDANTS.

12 _____/
13 REPORTER'S TRANSCRIPT OF PROCEEDINGS

14 BEFORE: HONORABLE V. RAYMOND SWOPE, JUDGE

15 DEPARTMENT 23

16 NOVEMBER 30, 2018

17
18 A P P E A R A N C E S

19 FOR THE PLAINTIFFS: STUART G. GROSS
20 ATTORNEY AT LAW

21 DAVID S. GODKIN
22 ATTORNEY AT LAW

23 FOR THE DEFENDANTS: JOSH H. LERNER
24 ATTORNEY AT LAW

25 SONAL N. MEHTA
26 ATTORNEY AT LAW

REPORTED BY: GERALDINE VANDEVELD, C.S.R. 8634

1 BURIED.

2 MR. GODKIN: YOUR HONOR, WHAT I MEAN BY THAT IS THE
3 REQUEST THAT THEY ARE MAKING CERTAINLY FOR THE LAPTOP, THE
4 DROPBOX AND ALL THAT IS PERFECTLY APPROPRIATE. FOR THE THREE
5 DOCUMENTS THAT WERE ATTACHMENTS TO MR. KRAMER'S EMAIL, THOSE
6 CAN BE PRODUCED PROMPTLY. THAT'S SIMPLE.

7 BUT THE REST OF THEIR REQUESTS ARE IN OUR VIEW
8 OVERLY BROAD. THEY ARE ASKING FOR -- FIRST OF ALL, THERE HAVE
9 BEEN NO COMMUNICATIONS WITH THIRD PARTIES REGARDING FACEBOOK'S
10 CONFIDENTIAL INFORMATION. THAT'S ONE OF THE THINGS THEY ARE
11 ASKING FOR.

12 ONE OF THEIR REQUESTS IS SO BROAD IT LITERALLY
13 COVERS EVERY COMMUNICATION BETWEEN AND AMONG ALL OF THE
14 LAWYERS REPRESENTING THE PLAINTIFF IN THIS CASE WHICH IS --
15 INCLUDES ATTORNEY/CLIENT PRIVILEGE MATERIALS, WORK PRODUCT
16 PRIVILEGE MATERIALS. IT'S A -- NUMBER ONE, AN ENORMOUS AMOUNT
17 OF MATERIAL. BUT, NUMBER TWO, IF THE COURT IS INCLINED TO
18 ORDER PRODUCTION OF DOCUMENTS THAT ARE PRIVILEGED, WE WOULD
19 RESPECTFULLY REQUEST A FULL BRIEFING ON WHETHER OR NOT THAT'S
20 APPROPRIATE. WE BELIEVE IT IS NOT. BUT IF THAT -- IF THE
21 COURT IS INCLINED TO ORDER RELIEF OF THAT BREATH, IT'S AN
22 ISSUE OF SUCH IMPORTANCE THAT WE WOULD -- WE WOULD LIKE AN
23 OPPORTUNITY TO FULLY BRIEF IT BEFORE IT HAPPENS.

24 THE REQUEST FOR IMAGING OF ATTORNEYS' LAPTOPS RAISES
25 ENORMOUS PROBLEMS. FIRST OF ALL, WE ALL HAVE MULTIPLE CLIENTS
26 WHO ARE NOT INVOLVED IN THIS LITIGATION. WE ALL HAVE MULTIPLE

1 STATE OF CALIFORNIA)

2) SS.

3 COUNTY OF SAN MATEO)

4 I, GERALDINE VANDEVELD, OFFICIAL COURT REPORTER,
5 COUNTY OF SAN MATEO, STATE OF CALIFORNIA, DO HEREBY CERTIFY:

6 THAT THE FOREGOING CONTAINS A TRUE, FULL AND CORRECT
7 TRANSCRIPT OF THE PROCEEDINGS GIVEN AND HAD IN THE
8 WITHIN-ENTITLED MATTER THAT WERE REPORTED BY ME AT THE TIME
9 AND PLACE MENTIONED AND THEREAFTER TRANSCRIBED BY ME OR AT MY
10 DIRECTION INTO LONGHAND TYPEWRITING AND THAT THE SAME IS A
11 CORRECT TRANSCRIPT OF THE PROCEEDINGS.

12 DATED: DECEMBER 3, 2018

13
14 

15 _____
16 GERALDINE VANDEVELD, C.S.R. #8634
17 OFFICIAL COURT REPORTER
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**[Redacted Version of
Document Proposed to
be Filed under Seal]**

EXHIBIT 2

From: [REDACTED]@ico.org.uk>

Sent time: 03/28/2018 07:06:39 AM

To: David Godkin; [REDACTED]@ico.org.uk>; [REDACTED]@ico.org.uk>; [REDACTED]@ico.org.uk>

Subject: RE: Extensive evidence regarding Facebook's treatment of friend data and user privacy

Dear David

Thank you for your email and my apologies for the late reply to it. Your correspondence has now been passed on to the investigation team directly dealing with the Cambridge Analytica/FB file. They will be in touch shortly

Best regards,

[REDACTED]

[REDACTED]

From: David Godkin [mailto:godkin@birnbaumgodkin.com]

Sent: 22 March 2018 16:24

To: [REDACTED]@ico.org.uk; [REDACTED]

Subject: Extensive evidence regarding Facebook's treatment of friend data and user privacy

Commissioner Denham and Staff:

My name is David Godkin. My firm has obtained extensive discovery of communications between Zuckerberg and numerous other Facebook executives and employees regarding Facebook's treatment of user data and third party developers from 2007 to 2015. I believe the information we have uncovered is highly relevant to the Cambridge Analytica investigation and demonstrates clearly that Facebook violated the privacy of UK citizens and its prior settlement with the FTC.

I have attempted to summarize the evidence below. This summary does not do the wealth of evidence we have obtained justice, which is why I'm hoping we can speak with your office to determine if there is an appropriate mechanism for your team to evaluate the evidence yourselves.


I look forward to hearing from you.

Regards,

David

--

[REDACTED]



As you can see, there is a lot here, and it would take months or even years for ICO to obtain discovery of this information from Facebook. We hope to identify an appropriate mechanism for your team to access it and determine its relevance to your current efforts.

BG001353

Sent from my iPhone

EXHIBIT 3

David Godkin

From: Thomas Scaramellino <thomas.scaramellino@gmail.com>
Sent: Thursday, August 31, 2017 12:50 PM
To: Hadi Partovi
Cc: David Godkin; ali@code.org; hadi@code.org
Subject: Re: FW: Facebook Platform Anti-Competition Lawsuit - Not a Level Playing Field

That's exactly right. Your response demonstrates precisely what the complaint alleges: this is a repeated pattern of behavior on Facebook's part, particularly as regards Platform. This was yet another bait and switch in a long line of bait and switches upon which Facebook has built its business. Plenty of other folks like you will be testifying in this case to demonstrate a broad pattern of anti-competitive and deceptive behavior.

I can talk up until about 4pm pt today or before 2pm pt tmrw. If I don't pick up, leave a vm and I'll call you right back.

On Thu, Aug 31, 2017 at 8:55 AM, Hadi Partovi <hadipartovi@code.org> wrote:

Our experience predates any of this, and was from 2007-2009, with a different set of FB Platform capabilities that were removed, pulling the rug out from under developers in a similar way but different circumstances.

I wouldn't do a voluntary subpoena. I'll give you a call later today to explain a bit further

On Thu, Aug 31, 2017 at 7:24 AM Thomas Scaramellino <thomas.scaramellino@gmail.com> wrote:

Hi guys,

Tom Scaramellino again from Hackley/E2.0/TallyGo. I am helping to drive this litigation forward. In 2013, I agreed to invest \$250k into a company founded by a former E2.0 employee just to give him his first chance. The company had to shut down due to Facebook's anti-competitive behavior before it could even get off the ground. The company sued in 2015, and I have been assisting in the litigation for some time now. My primary goal is to make sure the full story of Facebook Platform is eventually brought into the public light. The story of Facebook Platform includes Mark's decision to represent Platform as a level competitive playing field even though he had no intention of managing it as one. Rather, even early on Platform was used to gain leverage over any potential competitors by forcing them to sell to Facebook or risk Facebook shutting them down.

The story of Facebook Platform also includes all of the internal discussions around Mark's decision in 2012 to shut down access to the social graph and Newsfeed APIs and cannibalize them for FB's mobile advertising business. Facebook built its largest revenue source by holding hostage data that tens of thousands of companies relied upon and telling them they could either shut down or buy a ton of advertising. Facebook did this entirely arbitrarily, selecting which companies it would provide special access to data based on how much advertising they bought or pre-existing relationships they had. Startups and smaller businesses were forced to shut down because no one at Facebook would even talk to them. What is worse, Mark knew in 2012 he was going to shut down access to the social graph and, instead of putting developers on notice, he continued to entice them to spend enormous amounts of time and money knowing that those investments would go to zero.

Finally, the story of Facebook Platform includes Mark's decision in 2013 and 2014 to lie to the public and developers about why Facebook was shutting down the social graph, which it did for purely competitive reasons in order to dominate the mobile app space (note that today, other than Google or Snapchat, the top 10 downloaded apps are apps owned by Facebook). During this time, Facebook began considering virtually every type of app you can imagine to be

competitive, even apps that have very little to do with Facebook's core product. Facebook then decided to conceal shutting down the social graph and fold it into another unrelated initiative to make it easier to say publicly that the decision was about giving users more control. In fact, Graph API 2.0 made it impossible for well over a billion people (now 2 billion!) to control how their data is accessed and shared by companies other than Facebook.

We need a public discussion around whether one of the most powerful companies in the world can engage in this type of bait and switch conduct to the detriment of billions of consumers and tens of thousands of businesses. We need to have that discussion with all of Facebook's internal information at hand, which will happen once the case goes to trial. And, most importantly, we need to set a precedent that makes it much easier to combat any kind of predatory and deceptive behavior like this in the future. Otherwise the same movie will play over and over again until the only apps on your phone are made by one of the world's five largest companies.

I understand you are close with Mark and Sheryl, and I apologize for putting you in this position. We would like to take your deposition to obtain your testimony under oath. It will take one day.

Please let us know if you will accept service of a subpoena voluntarily. We will of course work with you to find a date and location that is convenient for you and for Facebook's counsel, who will have an opportunity to question you as well. If you want to talk, I'm at REDACTED

Tom

On Wed, Aug 23, 2017 at 1:09 PM, David Godkin <godkin@birnbaumgodkin.com> wrote:

| See below

From: Ali Partovi [mailto:ali@partovi.org]
Sent: Wednesday, August 23, 2017 4:07 PM
To: Hadi Partovi <hadipartovi@code.org>; David Godkin <godkin@birnbaumgodkin.com>
Cc: hadi@code.org; ali@code.org
Subject: Re: Facebook Platform Anti-Competition Lawsuit - Not a Level Playing Field

| I have two tidbits to add:

- our startup was named "iLike" and our logo was a thumbs-up button, which users could click to designate that they liked a piece of content. (This is public knowledge)

- in a private meeting with Facebook's corp dev team, they suggested they might buy our company. Then they added, "of course, we wouldn't pay very much for it."

I asked "why not?"

They replied, "Because we could also just shut you down if we wanted to."

Note, this was all after Facebook had created a new category called "Great Apps" and designated iLike as one of those selected for extra benefits and privileged treatment on the FB platform.

Ali

On Wed, Aug 23, 2017 at 3:48 PM Hadi Partovi <hadipartovi@code.org> wrote:

| wow - somebody is finally taking real action on this, good for you :-)

Confidentially,

Ali and I agree with a lot of this, and it was a very emotional and trying experience to bet our company on the Facebook Platform, only to see the platform turn into quicksand and see our investment lose its value overnight.

However, given our personal relationships with Sheryl Sandberg and Mark Zuckerberg, I'm not sure we'd want to be part of a formal litigation effort. We'd have much more to lose than to gain.

On Wed, Aug 23, 2017 at 12:36 PM, David Godkin <godkin@birnbaumgodkin.com> wrote:

Hadi, Ali,

My firm represents a small software developer that sued Facebook in April 2015 for its anti-competitive "bait and switch" behavior regarding Facebook Platform and Graph API. I'm hoping you can review the attached operative complaint, and we can setup a brief call in the coming weeks. In particular, we understand that you have experience with Facebook Platform and would be curious to see if you would be open to taking an interview regarding your experience. Other developers and academics in a position similar to yours have done this so you would be in good company. We are most interested in your experience of Facebook having provided or failed to provide a level competitive playing field, both relative to iLike's competitors and also relative to Facebook itself.

Our complaint alleges that in 2012 Zuckerberg decided to shut down a wide range of different categories of apps simply because they were competitive with future Facebook products even though Facebook represented for over 7 years it would maintain a level competitive playing field (though it failed to do so repeatedly during this time). The complaint also alleges that Facebook began enforcing competitive data restrictions in 2012 and 2013 and then shut the entire social graph down in 2014 and 2015 except to some whitelisted partners, who obtained an immense competitive advantage in their various markets (Tinder for instance got a huge advantage in the dating app space because of its special data access from Facebook). Then it goes on to allege that Facebook fabricated a story about user trust and privacy to mask its real motivations around shutting down competition.

We have uncovered evidence supporting these claims and believe Facebook's conduct also includes competitive restrictions against over 40,000 software applications.

Specifically, we allege that Facebook's conduct violates tort, contract, false advertising, fraud and anti-competition laws in California. We allege that Facebook can't make representations that induce developers to build applications using Facebook's social graph, and then whenever an app gets big enough or competitive enough, Facebook either buys it or destroys it and releases its own identical features. We allege that such conduct is unlawful and we intend to prove that at trial to set a precedent to prevent this kind of "bait and switch" from happening again. There are tens of thousands of apps that have suffered irreparable damage because of this behavior.

The litigation has a website at FacebooksAppEconomy.com - I'd encourage you to share with others and check it out yourself. If we don't do something about this then it will become increasingly harder for startups to compete. The law already exists to prevent this "bait and switch" behavior - someone just needs to stand up and defend software companies against Facebook's illegal tactics.

I know historically you have had very close relationships with Facebook and admire many of its people. My client does too, and this is why it's even more important to stand up for the ability of startups to meaningfully compete going forward. My client fears we are going down a dangerous path here in terms of consolidation in a wide range of consumer software markets. I hope you agree and we have the chance to discuss with you on a brief call to see if this is something you can get behind.

Sincerely yours,

David Godkin

Birnbaum & Godkin, LLP

EXHIBIT 4

1 IN THE SUPERIOR COURTS OF THE STATE OF CALIFORNIA

2 IN AND FOR THE COUNTY OF SAN MATEO

3 ---000---

4
5 SIX4THREE LLC,

CERTIFIED TRANSCRIPT

6 PLAINTIFFS,

7 VS.

CASE NO. CIV533328

8 FACEBOOK, INC., ET AL.,

9 DEFENDANTS.

10 _____/

11
12 REPORTER'S TRANSCRIPT OF PROCEEDINGS

13 BEFORE: HONORABLE V. RAYMOND SWOPE, JUDGE

14 DEPARTMENT 23

15 DECEMBER 7, 2018

16
17 A P P E A R A N C E S

18
19 FOR THE PLAINTIFFS: STUART G. GROSS
20 ATTORNEY AT LAW

21 DAVID S. GODKIN
22 ATTORNEY AT LAW

23 FOR THE DEFENDANTS: JOSH H. LERNER
24 ATTORNEY AT LAW

25 SONAL N. MEHTA
26 ATTORNEY AT LAW

REPORTED BY: GERALDINE VANDEVELD, C.S.R. 8634

1 EVENTS IS A LITTLE DIFFERENT THAN DESCRIBED, AS BEST AS I
2 UNDERSTAND THEM. BUT AT THE END OF THE DAY YOU'RE RIGHT
3 MR. KRAMER WAS SERVED WITH A PARLIAMENTARY ORDER THAT THEN
4 RESULTED IN A CONTEMPT NOTICE TO HIM THAT THEN RESULTED IN HIM
5 TURNING INFORMATION OVER. THERE'S NO DISPUTE AS TO THOSE
6 FACTS.

7 NOW, HOW DO WE SOLVE THE PROBLEM? I MEAN IF THERE
8 IS A SOLUTION? I'M ALL EARS. I'M TRYING TO FIGURE IT OUT.

9 THE COURT: RIGHT. WELL, I BELIEVE, IF I'M NOT
10 MISTAKEN, FACEBOOK HAS INQUIRED AS TO HOW ALL OF THESE THINGS
11 CULMINATED. WHEN DID THE PLAN TO DISCLOSE THIS CONFIDENTIAL
12 INFORMATION BEGIN? THAT'S WHAT FACEBOOK IS INQUIRING ON.
13 THAT'S WHAT THIS COURT WANTS TO KNOW.

14 MR. RUSSO: RIGHT. AND I WOULD SAY, YOUR HONOR,
15 THAT THERE WAS NO PLAN. I BELIEVE WHAT MY CLIENTS HAVE TOLD
16 ME THAT IF THEY WERE SUBJECT -- OR NOT THEY -- MR. KRAMER WAS
17 SUBJECT TO CIRCUMSTANCES THAT TOOK HIM COMPLETELY BY SURPRISE.
18 I KNOW THAT'S DISPUTED. AND I KNOW WE'RE GOING TO HAVE SOME
19 TYPE OF INQUIRY HERE. MAYBE, IN FACT, A SEPARATE TRIAL
20 ASSUMING YOUR HONOR ALLOWS IT WHERE HE IS HEARD AND HE
21 EXPLAINS EXACTLY WHAT HAPPENS UNDER OATH.

22 I THINK HE'S ALREADY DONE THAT IN ONE DECLARATION
23 THAT'S BEEN SUBMITTED TO YOU. I KNOW THAT I HAVE
24 CROSS-EXAMINED HIM ABOUT THAT. AND HE CREDIBLY INFORMS ME OF
25 CIRCUMSTANCES THAT WERE BEYOND HIS CONTROL. I THINK YOUR
26 HONOR WILL MAKE THAT DETERMINATION. I HAVEN'T ASKED COUNSEL

1 FOR FACEBOOK WHAT IS THE END GAME HERE? WHAT IS THE PURPOSE
2 OF THIS? IS IT TO PUNISH MR. KRAMER FOR AN INADVERTENT
3 MISTAKE OR A NEGLIGENT MISTAKE OR IS IT SOME BROADER PURPOSE?
4 I DON'T KNOW, BUT I DO KNOW AS WE SIT HERE TODAY WE ARE FULLY
5 COOPERATIVE. WE WANT TO FIGURE OUT WHAT A SOLUTION IS. AND
6 WE WANT TO FIGURE OUT A WAY TO GET THERE QUICKLY WITHOUT
7 SPENDING A FORTUNE IN TIME AND MONEY. NO QUESTION ABOUT ALL
8 THOSE THINGS.

9 THE COURT: I UNDERSTAND. WITH REGARD TO THE
10 FORENSIC EXAMINER AND THE LACK OF INDEPENDENCE, THE COURT MAY
11 HAVE A SOLUTION TO THAT ISSUE BECAUSE I BELIEVE THAT IF THERE
12 IS AN INDEPENDENT FORENSIC EXAMINER, THAT EXAMINER CAN AT THE
13 DIRECTION OF THE COURT OR STIPULATION OF THE PARTIES GLEAN OUT
14 THE CONFIDENTIAL OR PRIVATE COMMUNICATIONS THAT HAVE NOTHING
15 TO DO WITH THIS CASE. AND, ALSO, RETAIN THAT INFORMATION
16 UNTIL FURTHER ORDER OF THE COURT. WOULD THAT BE SOMETHING
17 THAT WOULD BE SATISFACTORY TO YOU OR YOUR CLIENTS?

18 MR. RUSSO: I'M SURE, YOUR HONOR, SO LONG THE
19 APPROPRIATE CONSTRAINTS RESPECTING THE ATTORNEY/CLIENT,
20 ATTORNEY WORK PRODUCT SECRET INFORMATION, SPOUSAL PRIVILEGE
21 INFORMATION, PRIVATE INFORMATION. IF ALL THOSE THINGS ARE
22 FACTORED IN, ABSOLUTELY.

23 THE COURT: ALL RIGHT. MS. MEHTA, YOU HEARD MY
24 QUESTIONS TO MR. RUSSO CONCERNING THE USE OF THE FORENSIC
25 EXAMINER AND ALSO THE PRIVACY AND THE ATTORNEY/CLIENT --
26 ATTORNEY/CLIENT WORK PRODUCT CONCERNS THAT HE HAS.

1 THE CLERK: THANK YOU.

2 THE COURT:

3 Q. GOOD MORNING, MR. SCARAMELLINO.

4 A. GOOD MORNING, YOUR HONOR.

5 Q. ARE YOU ON THE LEGAL TEAM FOR THE SAN FRANCISCO
6 ACTION THAT WAS FILED BY MR. GROSS AND MR. KRAMER FOR NOVEMBER
7 OF 2018?

8 A. I BELIEVE SO, YOUR HONOR.

9 Q. ARE YOU A MEMBER OF THE CALIFORNIA BAR?

10 A. NO, SIR. NO, YOUR HONOR.

11 Q. THERE HAVE BEEN REPRESENTATIONS THAT YOU HAVE BEEN.
12 HAVE YOU -- ARE YOU NOW A MEMBER OF ANY BAR WITHIN THE UNITED
13 STATES?

14 A. NO, YOUR HONOR.

15 MR. RUSSO: TO BE CLEAR, I REPRESENTED HE PASSED THE
16 EXAMS AND IS AWAITING ADMITTANCE.

17 THE COURT:

18 Q. DID YOU PASS THE EXAMS IN CALIFORNIA?

19 A. I PASSED THE CALIFORNIA BAR, YOUR HONOR.

20 Q. YOU DID?

21 A. YES.

22 Q. OKAY. WHEN?

23 A. EARLIER THIS YEAR.

24 Q. THE FEBRUARY BAR?

25 A. YES, SIR.

26 Q. OKAY. THAT'S THE FEBRUARY 2018 BAR, CORRECT?

1 A. YES, YOUR HONOR.

2 THE COURT: ALL RIGHT. AS I SAID, WE'VE BEEN GOING
3 FOR A WHILE. I DO HAVE A FEW MORE QUESTIONS OF YOU,
4 MR. SCARAMELLINO, BUT I NEED TO GIVE THE COURT REPORTER A
5 BREAK. SO WHAT WE'RE GOING TO DO. WE'RE GOING TO BREAK FOR
6 ABOUT A HALF HOUR, AND WE WILL RECONVENE AT 11:10. ALL RIGHT.
7 THANK YOU VERY MUCH, EVERYONE. COURT IS IN RECESS UNTIL TEN
8 MINUTES AFTER 11:00.

9 (WHEREUPON, A RECESS WAS TAKEN.)

10 THE COURT: GOOD MORNING ONCE AGAIN, EVERYONE. THE
11 RECORD SHALL REFLECT THAT ALL COUNSEL ARE PRESENT AT THE
12 COUNSEL TABLE AND ALSO IN THE WITNESS BOX. MR. RUSSO IS WITH
13 HIS COUNSEL -- WITH HIS CLIENTS RATHER IN THE JURY BOX SO THAT
14 THE COURT REPORTER CAN HEAR MR. RUSSO AND HIS CLIENTS BETTER.

15 I WAS IN THE MIDST OF ASKING SOME QUESTIONS OF
16 MR. SCARAMELLINO BEFORE WE BROKE, AND I HAVE A FEW MORE. I
17 REMIND YOU, MR. SCARAMELLINO, THAT YOU REMAIN UNDER OATH.

18 Q. IN YOUR DECLARATION THAT WAS FILED ON JUNE 20TH,
19 2017 -- I'M SORRY -- IN MR. GODKIN'S DECLARATION, HE SAID THAT
20 YOU BEGAN PERFORMING WORK AS HIS LAW CLERK IN THIS LITIGATION
21 AS OF SOME TIME IN JUNE OF 2017; IS THAT CORRECT?

22 A. I SERVED AS A LAW CLERK IN SOMETHING OF THE CAPACITY
23 AS A LEGAL INTERN, YOUR HONOR, FOR MR. GODKIN'S FIRM. I
24 CANNOT TELL YOU THAT THAT TIMEFRAME IS ACCURATE THOUGH. I
25 BELIEVE IT MAY HAVE STARTED PRIOR TO THAT TIMEFRAME.

26 Q. OKAY. HIS DECLARATION WAS DATED JUNE 20TH, 2017.

1 AND HE SAID THAT YOU WERE DOING WORK WITH HIS LAW FIRM ON THIS
2 LITIGATION.

3 A. CORRECT, YOUR HONOR. IF I MAY CLARIFY, I BELIEVE
4 THAT AT THE INCEPTION OF THIS LITIGATION, MR. GODKIN AND I
5 CAME TO AN AGREEMENT, WHICH I BELIEVE WAS MEMORIALIZED IN
6 WRITING THAT IN ORDER TO MANAGE THE COST OF THIS LITIGATION AS
7 WELL AS TO ADDRESS THE LIMITED RESOURCES OF BIRNBAUM & GODKIN
8 IN LITIGATION AGAINST FACEBOOK WHAT WE PERCEIVED TO BE A HIGH
9 STATES ISSUE, THAT IT WOULD BE NECESSARY AND PRUDENT TO HAVE
10 ADDITIONAL RESOURCES. AND THEN MR. GODKIN FELT THAT I WAS
11 QUALIFIED TO PROVIDE THEM. AND SO IN MY VIEW, I HAVE BEEN
12 ACTING IN THAT CAPACITY AS A LEGAL INTERN SINCE THE INCEPTION
13 OF THIS SUIT.

14 Q. SO ARE YOU STILL WORKING FOR MR. GODKIN IN RELATION
15 TO THE MERITS OF THIS LITIGATION?

16 A. YES, YOUR HONOR, I BELIEVE SO.

17 Q. YOU REMAIN IN THAT CAPACITY AS A LAW CLERK OR LEGAL
18 INTERN AS A MEMBER OF THE LEGAL TEAM SUPPORTING THIS
19 LITIGATION?

20 A. YES, YOUR HONOR.

21 Q. OKAY. DID YOU SEVER THE SIX4THREE DROPBOX ACCOUNT
22 WHERE THE DOCUMENTS AND EVIDENCE RELATING TO THIS LITIGATION
23 WAS STORED?

24 A. ON NOVEMBER 20TH I BELIEVE, YOUR HONOR, MR. GROSS
25 AND I SPOKE. AND HE DIRECTED ME TO TAKE ALL MEASURES TO
26 ENSURE THAT MR. KRAMER TO THE BEST EXTENT I COULD -- COULD NOT

1 STATE OF CALIFORNIA)

2) SS.

3 COUNTY OF SAN MATEO)

4 I, GERALDINE VANDEVELD, OFFICIAL COURT REPORTER,
5 COUNTY OF SAN MATEO, STATE OF CALIFORNIA, DO HEREBY CERTIFY:

6 THAT THE FOREGOING CONTAINS A TRUE, FULL AND CORRECT
7 TRANSCRIPT OF THE PROCEEDINGS GIVEN AND HAD IN THE
8 WITHIN-ENTITLED MATTER THAT WERE REPORTED BY ME AT THE TIME
9 AND PLACE MENTIONED AND THEREAFTER TRANSCRIBED BY ME OR AT MY
10 DIRECTION INTO LONGHAND TYPEWRITING AND THAT THE SAME IS A
11 CORRECT TRANSCRIPT OF THE PROCEEDINGS.

12 DATED: DECEMBER 12, 2018

13
14 

15 _____
16 GERALDINE VANDEVELD, C.S.R. #8634
17 OFFICIAL COURT REPORTER
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**[Redacted Version of
Document Proposed to
be Filed under Seal]**

EXHIBIT 5

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN MATEO
- - - - - x
SIX4THREE,
Plaintiff,
V. Case No. CIV 533328
FACEBOOK, INC, a Delaware
corporation, and Does 1 - 50,
inclusive,
Defendants.
- - - - - x
VIDEOTAPED DEPOSITION OF
THOMAS SCARAMELLINO
April 21, 2017
9:10 a.m.
Conn Kavanaugh Rosenthal Peisch & Ford, LLP
Ten Post Office Square
Boston, Massachusetts
Reported By:
Rosemary F. Grogan,
RPR, CSR No. 112993
Job No. 10031574

EXHIBIT 6

From: Thomas Scaramellino <thomas.scaramellino@gmail.com>
Sent time: 05/15/2018 03:46:33 PM
To: [REDACTED]@ap.org>
Cc: [REDACTED] David Godkin
Subject: Re: Call?

Thanks [REDACTED] I am an attorney and member of the legal team here. Yes, I was the founder of Efficiency 2.0.

Let us know a good time for a call this week or next. There is an opportunity to unseal about 3,000 pages of hot documents that we believe very clearly prove the allegations in our complaint. The judge will rule on unsealing the evidence on July 2. Any amicus briefs by news or privacy organizations in support of unsealing the evidence need to be filed by June 6. Happy to discuss.

On Tue, May 15, 2018 at 12:43 PM, [REDACTED]@ap.org> wrote:

Please to meet you gentlemen.

Absolutely would like to talk. Those are some very powerful allegations of predatory monopolistic behavior.

I am very curious about these sealed docs.

Tom, what's your relation with the case? Are you the Efficiency 2.0 founder?

[REDACTED]

[REDACTED]

-----Original Message-----

From: Thomas Scaramellino <thomas.scaramellino@gmail.com>
Sent: Tuesday, May 15, 2018 3:15 PM
To: [REDACTED]
Cc: David Godkin <godkin@birnbaumgodkin.com>; [REDACTED]
Subject: Re: Call?

BACKGROUND | NON-ATTRIBUTION

Hi [REDACTED]

Very nice to meet you. Is there a good time for a 30 min call this week or next? I have attached a summary of our public allegations against Facebook, Zuckerberg and five other senior executives.

Warm regards,

Tom

On Tue, May 15, 2018 at 12:06 PM, [REDACTED] wrote:

Hi all,

Thomas, David, meet [REDACTED] from the AP. I have never met him but we have talked on the phone and he seemed very knowledgeable about how journalists could benefit from the discovery process.

[REDACTED] meet Thomas and David who are involved in the Six4Three case.

Maybe we should arrange a call?

The information contained in this communication is intended for the use of the designated recipients named above. If the reader of this communication is not the intended recipient, you are hereby notified that you have received this communication in error, and that any review, dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify The Associated Press immediately by telephone at +1-212-621-1500 and delete this email. Thank you.

BG001308

EXHIBIT 7

From: Thomas Scaramellino <thomas.scaramellino@gmail.com>
Sent time: 06/01/2018 12:25:20 PM
To: [REDACTED]@politico.eu>
Cc: James Kruzer; David Godkin; Stuart Gross <sgross@grosskleinlaw.com>
Subject: Re: FB Motion to Seal

[REDACTED] will Politico be joining the Guardian's filing on this or participating in some other fashion? Briefs should be filed by Tues. We've made clear that we will only be working with organizations who support making this evidence public and having an informed and transparent debate on these critical issues. Please advise by end of day.

On Thu, May 31, 2018 at 9:18 AM, Thomas Scaramellino <thomas.scaramellino@gmail.com> wrote:

We are still waiting to hear back from the clerk. Most likely scenario is we stick with current plan of filing amicus brief. They filed their belated motion to seal late last night. Please see attached. Let's setup a call to discuss. I am very busy today but perhaps one of the other attorneys has time. Are you working with Guardian or another group on joining an amicus brief? Best, Tom

BG002172

EXHIBIT 8

From: [REDACTED] <[REDACTED]@openmarketsinstitute.org>
Sent time: 05/31/2018 02:49:41 PM
To: Thomas Scaramellino <thomas.scaramellino@gmail.com>; [REDACTED] <[REDACTED]@openmarketsinstitute.org>; [REDACTED] <[REDACTED]@openmarketsinstitute.org>
Cc: James Kruzer; David Godkin; Stuart Gross <sgross@grosskleinlaw.com>; [REDACTED] <[REDACTED]@gmail.com>
Subject: Re: FB Motion to Seal

Thanks, Thomas. Do you (or one of your colleagues) have time to chat tomorrow?

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

From: Thomas Scaramellino <thomas.scaramellino@gmail.com>
Sent: Thursday, May 31, 2018 12:21:19 PM
To: [REDACTED]
Cc: James Kruzer; David S. Godkin; Stuart Gross; [REDACTED]
Subject: FB Motion to Seal

We are still waiting to hear back from the clerk. Most likely scenario is we stick with current plan of filing amicus brief. They filed their belated motion to seal late last night. Please see attached. Let's setup a call to discuss. I am very busy today but perhaps one of the other attorneys has time today. If not, I'm available tmrw or over wknd. What is your status on filing a brief? Best, Tom

EXHIBIT 9

1 Basil P. Fthenakis, Esq. (88399)
2 CRITERION LAW
3 2225 E. Bayshore Road, Suite 200
4 Palo Alto, California 94303
5 Tel. (650) 352-8400
6 Fax. (650) 352-8408
7 bpf@criterionlaw.com

8 Of counsel:

9 David S. Godkin (admitted *pro hac vice*)
10 James E. Kruzer (admitted *pro hac vice*)
11 BIRNBAUM & GODKIN, LLP
12 280 Summer Street
13 Boston, MA 02210
14 (617) 307-6100
15 godkin@birnbaumgodkin.com
16 kruzer@birnbaumgodkin.com

17 Attorneys for Plaintiff,
18 SIX4THREE, LLC, a Delaware
19 limited liability company

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN MATEO

SIX4THREE, LLC, a Delaware limited
liability company,

Plaintiff,

v.

FACEBOOK, INC., a Delaware corporation
and DOES 1 through 50, inclusive

Defendants.

Case No. CIV 533328

DECLARATION OF DAVID S. GODKIN
IN OPPOSITION TO FACEBOOK'S
MOTIONS TO COMPEL
EXHIBIT A REDACTED FOR PUBLIC FILING

HEARING DATE: July 10, 2017

HEARING TIME: 2:00 p.m.

DEPARTMENT: 2 (Complex Civil
Litigation)

JUDGE: Honorable Marie S. Weiner

FILING DATE: April 10, 2015

TRIAL DATE: Vacated

1 //

2 I, David S. Godkin, declare:

3 1. I am an attorney at law and a member of the Law Offices of Birnbaum & Godkin,
4 LLP, counsel for Plaintiff Six4Three, LLC ("643") in the above-captioned action.

5 2. I submit this declaration in support of 643's opposition to two motions filed by
6 Facebook, Inc. ("Facebook"): Facebook's motion to compel improperly withheld documents,
7 and Facebook's motion to compel third party communications. This declaration is not intended
8 to waive any rights or privileges held by counsel, 643, # 2, LLC, or Mr. Scaramellino with
9 respect to privileged communications.

10 3. Thomas Scaramellino has been a client of my law firm, Birnbaum & Godkin,
11 LLP, since April 2013. Accordingly, Mr. Scaramellino's communications with me, my
12 associates, and my employees, for purposes of obtaining legal advice, are protected by the
13 attorney client privilege.

14 4. Mr. Scaramellino contacted me in early 2015 to discuss possible claims to be
15 brought by 643, a company in which Mr. Scaramellino was an advisor and investor through an
16 investment syndicate, a Delaware limited liability company, called #2, LLC. Mr. Scaramellino
17 introduced me to Theodore Kramer, who was the co-founder and managing director of 643.
18 Because Mr. Scaramellino was a member of #2, LLC, and because #2 LLC was 643's lead
19 investor, I concluded that Mr. Scaramellino, the investment entity #2, LLC, and 643 had in
20 common an interest in securing legal advice relating to the same matter - 643's claims against
21 Facebook. Furthermore, because Mr. Scaramellino is my client and was communicating with me
22 about matters in which he, the investment entity and 643 shared a common interest, I concluded
23 that Mr. Scaramellino was communicating with me with the expectation that all of his
24 communications with me would remain confidential.

25 5. At the time Mr. Scaramellino began consulting with me concerning the potential
26 claims against Facebook, I was aware that Mr. Scaramellino had graduated from Yale Law
27 School, and that he had obtained experience working on complex litigation matters as an
28

1 employee of the law firm Davis, Polk & Wardwell and also at the United States Attorney's
2 Office for the Southern District of New York (SDNY). I understood that at both Davis Polk and
3 SDNY, Mr. Scaramellino had performed all of the typical tasks required of a law clerk, including
4 evidence review, research, and drafting of pleadings. I understood that the matters in which Mr.
5 Scaramellino performed these tasks were primarily related to complex civil litigation.

6 6. Mr. Scaramellino, Mr. Kramer and I recognized that filing a lawsuit against
7 Facebook would require substantial legal resources. Because my firm is small, and because 643
8 is a defunct startup with very limited resources, I concluded that it would be appropriate and
9 helpful for Mr. Scaramellino to work with me and my firm as part of the legal team. I believed
10 that Mr. Scaramellino was highly qualified to work with me and my firm in this role, because he
11 had completed law school at a top-rated school, and because he had obtained relevant experience
12 while working as a law clerk at Davis Polk and SDNY. I also believed that Mr. Scaramellino was
13 uniquely suited for this role because he also possessed a knowledge of the software industry,
14 Facebook Platform, and related technical terms that is not common among law clerks. I also
15 believed that this arrangement would benefit 643 by reducing the cost of prosecuting the case. As
16 such, Mr. Scaramellino's agreement to work with me on the litigation team was a condition of
17 Birnbaum & Godkin's engagement with 643.

18 7. Accordingly, Mr. Scaramellino has been working with me and my firm as a
19 member of the legal team since my firm was retained by 643, with 643's full knowledge and
20 approval. Mr. Scaramellino is performing legal research, fact investigation, assembly of data
21 and information, and preparation of pleadings, and any other work that I decide will assist me
22 and my firm in carrying out the representation of 643. All of the tasks performed by Mr.
23 Scaramellino are performed at my direction and under my supervision. All of the work
24 performed by Mr. Scaramellino has been reviewed by me or another attorney at my firm, and
25 merged into my firm's work product. Mr. Scaramellino is not being paid for his work. His role
26 is akin to that of a law clerk or paralegal, similar to his roles at Davis Polk and SDNY.

1 8. Among his other duties as part of my team, Mr. Scaramellino has participated in
2 meetings and conversations with 643's founders, Mr. Kramer and Mr. Gildea. He has also
3 assisted me in communications with potential witnesses and expert witnesses, including the third
4 party communications that are the subject of Facebook's motion.

5 9. On April 21, 2017, Mr. Scaramellino sat for a full day deposition at which he was
6 interrogated at length by Facebook's counsel concerning any and all facts and events that took
7 place before my firm was retained. The only communications up until that time that have been
8 withheld on privilege grounds are a small number of communications with another law firm
9 about 643's claims against Facebook, and a small number of internal communications between
10 Mr. Scaramellino and Messrs. Kramer and Gildea about gathering information for review by the
11 law firm for the purpose of evaluating 643's claims.

12 10. The communications and documents that Facebook is moving to compel with
13 these two motions have appropriately been withheld from production, because Mr. Scaramellino
14 is a client of my firm, because he and his investment vehicle have in common an interest in
15 securing legal advice relating to the claims against Facebook, and because he is a member of my
16 legal team who is under my supervision and acting at all times at my direction. All of Mr.
17 Scaramellino's communications with me and my employees have been with the expectation that
18 they would remain confidential.

19 11. Exhibit 12 to Joshua Lerner's Declaration in Support of Facebook's Motion to
20 Compel Third Party Communications is an email that was included on the privilege log 643
21 provided to Facebook. The email is referenced on page 8, line 39 of the modified version of the
22 privilege log attached as Exhibit 4 to the Declaration of Joshua H. Lerner in Support of
23 Defendant Facebook, Inc.'s Motion to Compel Improperly Withheld Documents
24 (jonathan@gotinder.com). These emails were sent using a mail merge program from an email
25 address maintained by my firm, 643litigation@birnbaumgodkin.com. The mail merge program
26 used to send the email was launched on February 3, 2017, which is the date the privilege log
27 states the email was sent. It appears that the email was not in fact sent by the mail merge
28

1 program and delivered to the recipient until February 5, 2017. The various emails in rows 32 - 42
2 were delivered between February 3, 2017 and February 5, 2017 due to the time it took the mail
3 merge program to transfer the emails from the Outbox to the Sent folder. It is my belief that the
4 burden of identifying whether the email recipient happened to receive the email on February 3, 4
5 or 5 for each individual email out of the hundreds of emails covered by this entry in the log
6 outweighs any benefit. Further, these emails were approved and edited by me and reflect my
7 thoughts and impressions regarding this case.

8 12. Attached hereto as Exhibit A are excerpts of the transcript of the deposition of
9 Mr. Scaramellino taken by Facebook on April 21, 2017, which excerpts have been cited in
10 Plaintiff's Opposition.

11 I declare under penalty of perjury that the foregoing is true and correct.

12 Executed on June 19, 2017, at Boston, MA.

13
14 
15 David S. Godkin, Esq.

PROOF OF SERVICE

I, Cheryl A. McDuffee, declare:

I am a citizen of the United States and employed in Suffolk County, Massachusetts. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 280 Summer Street, Boston, MA 02210. On June 19, 2017, I served a copy of the within document(s):

**DECLARATION OF DAVID S. GODKIN IN OPPOSITION TO FACEBOOK'S
MOTIONS TO COMPEL**



by electronic service, per the agreement of the parties, by emailing a true and correct copy through counsel's email address to Defendant's counsel of record at the email addresses set forth below.

Joshua Lerner <jlerner@durietangri.com>
Sonal N. Mehta <SMehta@durietangri.com>
Laura Miller <LMiller@durietangri.com>
Catherine Kim <ckim@durietangri.com>
Durie Tangri <Service-Six4Three@durietangri.com>
217 Leidesdorff Street
San Francisco, CA 94111
P (415) 376 - 6427
Attorney for Defendant
FACEBOOK, INC.

Department 2
Complex Civil Litigation
<complexcivil@sanmateocourt.org>

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed June 19, 2017, at Boston, Massachusetts.

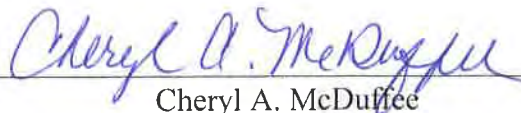

Cheryl A. McDuffee

EXHIBIT A

REDACTED FOR PUBLIC FILING

EXHIBIT 10

FILED
SAN MATEO COUNTY

JUL 14 2017

Clerk of the Superior Court
By WJ
DEPUTY CLERK

CIV533328
ORD
Order
604568



SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN MATEO
COMPLEX CIVIL LITIGATION

SIX4THREE LLC,

Plaintiff,

vs.

FACEBOOK, INC., and DOES 1
through 50,

Defendants.

Case No. CIV 533328

Assigned for All Purposes to
Hon. Marie S. Weiner, Dept. 2

**ORDER ON DEFENDANT'S
MOTION TO COMPEL
PRODUCTION OF WITHHELD
SCARAMELLINO
COMMUNICATIONS**

On June 10, 2017, hearing was held on Defendant's Motion to Compel Improperly Withheld Documents in Department 2 of this Court before the Honorable Marie S. Weiner. Basil Fthenakis of Criterion Law and David Godkin of Birnbaum & Godkin LLP appeared on behalf of Plaintiff Six4Three LLC; and Sonal Mehta, Joshua Lerner, Laura Miller, and Catherine Kim of Durie Tangri LLP appeared on behalf of Defendant Facebook Inc. Natalie Naugle, Esq., in-house counsel at Facebook Inc., also appeared.

Upon due considerations of the briefs and evidence presented, and the oral argument of counsel for the parties, and having taken the matter under submission,

IT IS HEREBY ORDERED as follows:

Thomas Scaramellino attended law school but has never practiced law and has never been licensed as an attorney in any state. Scaramellino is the owner of #2 LLC. #2LLC is the initial and sole investor in Plaintiff Six4Three LLC (although there may be subsequent investors). Scaramellino is not and has never been an officer, director, managing member or employee of Plaintiff Six4Three LLC. Scaramellino participated in the business of Plaintiff, asking as a “business advisor”.

In contemplation of litigation, Scaramellino contacted attorneys on behalf of Plaintiff to seek attorney services for this lawsuit. One such law firm was Goodwin Proctor, which ultimately did not agree to represent Plaintiff because of a conflict of interest with Facebook. Scaramellino has a previously existing attorney-client relationship with Goodwin Proctor. Thereafter Plaintiff hired Birnbaum Godkin in March 2015 and this lawsuit was filed in April 2015.

Uniquely, Scaramellino agreed to work for Birnbaum Godkin on this lawsuit for free, performing services as a law clerk, apparently in order to reduce the fees and expenses to Plaintiff for the legal services of the attorney. Obviously Scaramellino is not an actual “employee” of Birnbaum Godkin.

Scaramellino is a material witness in this case.

Plaintiff and its counsel now assert that all communications to and from Scaramellino since at least May 2015, if not before, are attorney-client privileged or attorney work product, because he is on the Plaintiff’s “litigation team” in this lawsuit.

Notably, there is no declaration by Scaramellino himself in opposition to this motion, although some of his deposition testimony is used.

Defendant Facebook has filed a motion to compel certain categories of documents listed on Plaintiff's privilege log, reflecting communications to or from Scaramellino.

1. *Communications between Scaramellino and Goodwin Proctor.* Plaintiff has made a prima facie showing that this is a communication between an attorney and an existing client on communication regarding accepting employment as an attorney on this case. The motion to compel is DENIED.

2. *Communications between Scaramellino and Birnbaum Godkin.* Plaintiff has made a prima facie showing that this is a communications between an attorney and Scaramenllino as well as managing members of Plaintiff regarding potential employment as an attorney on this lawsuit. The motion to compel is DENIED.

3. *Communications between Scaramellino and principals of Plaintiff.* Lines 1 and 2 of the privilege log are (1) emails between Scaramellino and Gildea of Six4Three LLC dated March 2, 2015, and (2) emails between Scaramellino and Gildea and Kramer dated August 20, 2014 through February 13, 2015. There is no communication with an attorney. Plaintiff has asserted the attorney-client privilege and the attorney work product doctrine. Obviously it cannot be attorney work product, because nothing was drafted by an attorney, and there is no indication that it reflects the impressions or opinions of an attorney. Plaintiff has failed to make a prima facie showing of privilege. In an abundance of caution, the Court will conduct an *in camera* review of these emails, copies of which are to be delivered directly to Department 2 on or before **July 24, 2017** by Plaintiff.

4. *Communications between Scaramellino and “Dalton”*. Line 31 is emails between Scaramellino and “Dalton”, whom Plaintiff represents is an “app” developer dated February 2, 2017. The communication from Scaramellino is not at the law firm email, but rather it reflects that it is a communication from his personal email. Accordingly Plaintiff has not made a prima facie showing that this communication was explicitly and only in his capacity as a “law clerk” for the attorney. Rather it is a personal email communication to a potential witness by a non-attorney. In an abundance of caution, the Court will conduct an *in camera* review of these emails, copies of which are to be delivered directly to Department 2 on or before **July 24, 2017** by Plaintiff.

5. *Communications between Scaramellino and Sparkplug*. Sparkplug is a non-party service that helped create a website www.FacebooksAppEconomy.com attacking Facebook, which Plaintiff characterizes as a “gripe site”. This public website explicitly represents itself to be a forum for small businesses to share information and provide “thoughts and feedback”. It solicits such businesses to contact “us” and provide detailed information about its business and how it was impacted by Facebook’s conduct. As presented, the website is a forum for sharing of information on negative experiences by small businesses who developed applications in regard to Facebook. There is absolutely no indication or disclosure that the website is by or on behalf of an attorney, or that the information shared would be going to an attorney, or that any response would be “contacting” an attorney. Nor is there any promise of confidentiality. On the contrary, the website even publicly posts alleged “comments” by a “small developer”.

Plaintiff asserts that email communications between Scaramellino and Sparkplug dated October 2016 through January 2017 are attorney work product, including the

preparation and posting of a video that is part of the public website. Apparently Plaintiff even plans to present that video as evidence in this lawsuit.

Even if Scaramellino is viewed as a law clerk of the Plaintiff's attorney in the course of these communications, they are communications to a third party about creation of a public website == which website says *nothing* about a relationship with an attorney, or that it will be a communication with a law firm, or that any communications thereon are confidential. It is *not* a website of a law firm; rather it is an electronic forum for people to gripe about Facebook.

In *Behunin*, the plaintiff Behunin retained attorney Steiner to sue Schwab. Steiner hired Levick, a public relations person, to create the website attacking the defendant Schwab.

After filing the Sealutions lawsuit, Steiner hired Levick to create a social media campaign to induce the Schwabs to settle the case. As part of this strategy, Levick created a website, www.chuck-you.com, linking the Schwabs to corruption, human rights violations, and atrocities associated with Suharto and his family. In a letter to Steiner and Behunin, a senior vice president at Levick stated: "Per our discussion with your client, Nicholas Behunin, LEVICK's goal will be to develop and deploy strategy and tactics of Mr. Behunin's legal complaint." The rest of the letter is redacted.

Behunin v. Superior Court (2017) 9 Cal.App.5th 833, 838. The Court of Appeal held that the communications regarding the creation of the website is not privileged, nor are the other communications between the plaintiff and the media relations firm.

There is no “public relations privilege” in California, and the courts cannot create one. (See *Seahaus La Jolla Owners Assn. v. Superior Court* (2014) 224 Cal.App.4th 754, 766-767, [“ ‘[t]he privileges set out in the Evidence Code are legislative creations; the courts of this state have no power to expand them’ ”]; *Citizens for Ceres v. Superior Court* (2013) 217 Cal.App.4th 889, 912 [“we are forbidden to create privileges or establish exceptions to privileges through case-by-case decisionmaking”].) Therefore, whether communications among a client, his or her attorney, and a public relations consultant are protected by the attorney-client privilege depends on whether the communications were confidential and whether disclosing them to the consultant was reasonably necessary to accomplish the purpose for which the client consulted the attorney. (See §§ 912, subd. (d), 952; *Seahaus La Jolla Owners Assn.*, at p. 766.)

Behunin, 9 Cal.App.5th at p. 845. The Court of Appeal found: (1) Levick was not someone to whom disclosure was reasonably necessary to accomplish the purpose for which the plaintiff retained Steiner (*id.* at p. 846); and (2) Steiner did not share a common interest with the plaintiff “ ‘in securing legal advice related to the same shared matter’ “ (*id.* at p. 854).

Plaintiff 643 bears the burden to show “[it] and [counsel’s] communications with [Sparkplug] were reasonably necessary for the accomplishment of the purpose for which [643] retained [counsel], which was to provide [643] with legal advice regarding [Facebook] and to represent [it] in [its] action against [Facebook]. (*Id.* at p. 850.) Here, Plaintiff 643 failed to proffer sufficient evidence to show that disclosure to Sparkplug was reasonably necessary.

The *Behunin* court found that a common interest did not exist between Behunin and Levick “in securing legal advice related to the same shared matter.” “(*Behunin*, 9 Cal.App.5th at p. 854.) Specifically,

There is no evidence, however, that Levick sought legal advice from Steiner or that there was an attorney-client relationship between Steiner and Levick. To the contrary, Behunin stated in his declaration that Steiner hired Levick on behalf of Behunin without knowing anything about the content of the website Levick was to create. Although Levick, as a paid consultant, may have wanted its public relations campaign to succeed, that is not the kind of common interest contemplated by sections 912 and 952.

(*Behunin*, at p. 854.)

Accordingly, the motion to compel these communications between Scaramellino and Sparkplug is GRANTED. Plaintiff shall produce the documents to Defendant on or before **July 24, 2017**.

DATED: July 14, 2017



HON. MARIE S. WEINER
JUDGE OF THE SUPERIOR COURT

SERVICE LIST
Six4Three v. Facebook, CIV 533328
as of May 3, 2017

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EXHIBIT 11

2-28
MSC

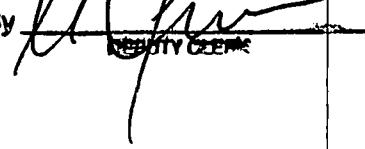
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FILED
SAN MATEO COUNTY

OCT 25 2016

Clerk of the Superior Court

By 
DEPUTY CLERK

RECEIVED

OCT 20 2016

CLERK OF THE SUPERIOR COURT
SAN MATEO COUNTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN MATEO

SIX4THREE, LLC a Delaware limited liability company,

Plaintiff,

v.

FACEBOOK, INC., a Delaware corporation and DOES 1-50, inclusive,

Defendant.

Case No. CIV 533328

^{gzb}
[PROPOSED] ORDER ON SIX4THREE'S MOTION FOR PROTECTIVE ORDER AND FACEBOOK'S MOTION FOR PROTECTIVE ORDER

Date: October 13, 2016
Time: 9:00 a.m.
Dept.: Law and Motion

CIV533328
OAH
Order After Hearing
231344



1 Plaintiff Six4Three, LLC's ("Plaintiff") Motion for Protective Order and Defendant
2 Facebook, Inc.'s ("Facebook") Motion for Protective Order came on regularly for hearing before
3 the Court on October 13, 2016 in the Law and Motion Department.

4 The Court, having reviewed the moving papers and all opposing and reply papers filed
5 with the Court, and having heard the arguments of counsel, hereby DENIES Plaintiff's Motion
6 and GRANTS Defendant's Motion in part, as set out below.

7 Pursuant to Code of Civil Procedure Section 2031.060, the Court finds good cause to enter
8 a two-tier protective order.

9 Defendant indicates that Defendant's proposed protective order is similar to the Court's
10 model protective order. After comparing the Court's model protective order for double level of
11 confidentiality to Defendant's proposed protective order, the Court makes the following changes
12 to Defendant's proposed protective order (all paragraph, page and line references are to
13 Defendant's proposed protective order):

14 Paragraph 2, p.2:25: Delete "Highly Confidential" and replace with "Confidential"

15 Add to Paragraph 4(d), p.4:15 (which was omitted from Court's model protective order):
16 "and provided that if the party chooses a consultant or expert employed by the opposing party or
17 one of its competitors, the party shall notify the opposing party, or designating non-party, before
18 disclosing any Confidential Information to that individual and shall give the opposing party an
19 opportunity to move for a protective order preventing or limiting such disclosure;"

20 Delete Paragraph 4(e), p.4:16-17: "or other person who otherwise possessed or knew the
21 information"

22 Paragraph 8, p.6:9: Delete "Highly Confidential" and replace with "Confidential"

23 Delete Paragraph 11, p.7:15 only as to "identifies (by category, where appropriate)"

24 Delete entire Paragraph 18, p.11:24-12:7.

25 Delete entire Paragraph 19, p.12:8-16.

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1 The Court hereby enters the protective order attached as Exhibit A hereto, which reflects
2 the aforementioned modifications.

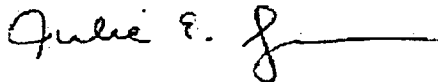
3 **IT IS SO ORDERED.**

4 DATED: OCT 24 2016
5

6 
7 HONORABLE JONATHAN KARESH
8

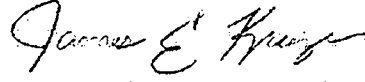
9 *Approved as to form by:*

10 **PERKINS COIE, LLP**

11 
12

13 Julie E. Schwartz

14 **BIRNBAUM & GODKIN, LLP**

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17 James E. Kruzer
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EXHIBIT A

1 Julie E. Schwartz, Bar No. 260624
JSchwartz@perkinscoie.com
2 PERKINS COIE LLP
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3 Palo Alto, CA 94304-1212
Telephone: 650.838.4300
4 Facsimile: 650.838.4350

5 James R. McCullagh, admitted *pro hac vice*
JMcCullagh@perkinscoie.com
6 PERKINS COIE LLP
1201 Third Avenue, Suite 4900
7 Seattle, WA 98101-3099
Telephone: 206.359.8000
8 Facsimile: 206.359.9000

9 Attorneys for Defendant
Facebook, Inc.

FILED
SAN MATEO COUNTY

OCT 25 2016

Clerk of the Superior Court
By 
DEPUTY CLERK

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF SAN MATEO**

14 SIX4THREE, LLC, a Delaware limited
liability company,

15
16 Plaintiff,

17 v.

18 FACEBOOK, INC., a Delaware
corporation and DOES 1-50, inclusive,

19 Defendant.
20

Case No. CIV533328

**STIPULATED [PROPOSED]
PROTECTIVE ORDER**

21 In order to protect confidential information obtained by the parties in connection with this
22 case, the parties, by and through their respective undersigned counsel and subject to the approval
23 of the Court, hereby agree as follows:

24 **Part One: Use Of Confidential Materials In Discovery**

25 1. Any party or non-party may designate as Confidential Information (by stamping
26 the relevant page or as otherwise set forth herein) any document or response to discovery which
27 that party or non-party considers in good faith to contain information involving trade secrets, or
28

1 confidential business, financial, or personal information, including personal financial information
2 about any individual or entity; information regarding any individual's or entity's banking
3 relationship with any banking institution, including information regarding financial transactions
4 or financial accounts, and any information regarding any individual or entity that is not otherwise
5 available to the public, subject to protection under Rules 2.550, 2.551, 2.580, 2.585, 8.160, and
6 8.490 of the California Rules of Court or under other provisions of California law. Any party or
7 non-party may designate as Highly Confidential Information (by stamping the relevant page or as
8 otherwise set forth herein) any document or response to discovery which that party or non-party
9 considers in good faith to contain information involving highly sensitive trade secrets or
10 confidential business, financial, or personal information, the disclosure of which would result in
11 the disclosure of trade secrets or other highly sensitive research, development, production,
12 personnel, commercial, market, financial, or business information, or highly sensitive personal
13 information, subject to protection under Rules 2.550, 2.551, 2.580, 2.585, 8.160, and 8.490 of the
14 California Rules of Court or under other provisions of California law. Where a document or
15 response consists of more than one page, the first page and each page on which confidential
16 information appears shall be so designated.

17 2. A party or non-party may designate information disclosed during a deposition or in
18 response to written discovery as Confidential Information or Highly Confidential Information by
19 so indicating in said responses or on the record at the deposition and requesting the preparation of
20 a separate transcript of such material. In addition, a party or non-party may designate in writing,
21 within thirty (30) days after receipt of said responses or of the deposition transcript for which the
22 designation is proposed, that specific pages of the transcript and/or specific responses be treated
23 as Confidential Information or Highly Confidential Information. Any other party may object to
24 such proposal, in writing or on the record. Upon such objection, the parties shall follow the
25 procedures described in Paragraph 9 below. Until the thirty (30) day period for designation has
26 lapsed, the entirety of each deposition transcript shall be treated as Confidential Information.
27 After the thirty (30) day period for designation has lapsed, any documents or information
28 designated pursuant to the procedure set forth in this paragraph shall be treated according to the

1 designation until the matter is resolved according to the procedures described in Paragraph 9
2 below, and counsel for all parties shall be responsible for marking all previously unmarked copies
3 of the designated material in their possession or control with the specified designation. A party
4 that makes original documents or materials available for inspection need not designate them as
5 Confidential Information or Highly Confidential Information until after the inspecting party has
6 indicated which materials it would like copied and produced. During the inspection and before the
7 designation and copying, all of the material made available for inspection shall be considered
8 Highly Confidential Information.

9 3. All Confidential Information or Highly Confidential Information produced or
10 exchanged in the course of this case (not including information that is publicly available) shall be
11 used by the party or parties to whom the information is produced solely for the purpose of this
12 case. Confidential Information or Highly Confidential Information shall not be used for any
13 commercial competitive, personal, or other purpose. Confidential Information or Highly
14 Confidential Information must be stored and maintained by a receiving party at a location and in a
15 secure manner that ensures that access is limited to the persons authorized under this Stipulated
16 Protective Order. The protections conferred by this Stipulated Protective Order cover not only
17 the Confidential Information or Highly Confidential Information produced or exchanged in this
18 case, but also (1) any information copied or extracted from or reflecting the Confidential
19 Information or Highly Confidential Information; (2) all copies, excerpts, summaries, or
20 compilations of Confidential Information or Highly Confidential Information; and (3) any
21 testimony, conversations, or presentations by parties or their counsel that might reveal
22 Confidential Information or Highly Confidential Information. However, the protections
23 conferred by this Stipulated Protective Order do not cover the following information: (a) any
24 information that is in the public domain at the time of disclosure to a receiving party or becomes
25 part of the public domain after its disclosure to a receiving party as a result of publication not
26 involving a violation of this Stipulated Protective Order, including becoming part of the public
27 record through trial or otherwise; and (b) any information known to the receiving party prior to
28

1 the disclosure or obtained by the receiving party after the disclosure from a source who obtained
2 the information lawfully and under no obligation of confidentiality to the designating party.

3 4. Except with the prior written consent of the other parties, or upon prior order of
4 this Court obtained upon notice to opposing counsel, Confidential Information shall not be
5 disclosed to any person other than:

6 (a) counsel for the respective parties to this litigation, including in-house
7 counsel and co-counsel retained for this litigation;

8 (b) employees of such counsel;

9 (c) individual parties or officers or employees of a party, to the extent deemed
10 necessary by counsel for the prosecution or defense of this litigation;

11 (d) consultants or expert witnesses retained for the prosecution or defense of
12 this litigation, provided that each such person shall execute a copy of the
13 Certification annexed to this Order (which shall be retained by counsel to
14 the party so disclosing the Confidential Information and made available
15 for inspection by opposing counsel during the pendency or after the
16 termination of the action only upon good cause shown and upon order of
17 the Court) before being shown or given any Confidential Information, and
18 provided that if the party chooses a consultant or expert employed by the
19 opposing party or one of its competitors, the party shall notify the
20 opposing party, or designating non-party, before disclosing any
21 Confidential Information to that individual and shall give the opposing
22 party an opportunity to move for a protective order preventing or limiting
23 such disclosure;

24 (e) any authors or recipients of the Confidential Information or a custodian;

25 (f) the Court, court personnel, and court reporters; and

26 (g) witnesses (other than persons described in Paragraph 4(e)). A witness shall
27 sign the Certification before being shown a confidential document.

28 Confidential Information may be disclosed to a witness who will not sign

1 the Certification only in a deposition at which the party who designated
2 the Confidential Information is represented or has been given notice that
3 Confidential Information produced by the party may be used. At the
4 request of any party, the portion of the deposition transcript involving the
5 Confidential Information shall be designated "Confidential" pursuant to
6 Paragraph 2 above. Witnesses shown Confidential Information shall not be
7 allowed to retain copies.

8 5. Except with the prior written consent of the other parties, or upon prior order of
9 this Court obtained after notice to opposing counsel, Highly Confidential Information shall be
10 treated in the same manner as Confidential Information pursuant to Paragraph 4 above, except
11 that it shall not be disclosed to individual parties or directors, officers or employees of a party, or
12 to witnesses (other than persons described in Paragraph 4(a) or 4(e)).

13 6. Any persons receiving Confidential Information or Highly Confidential
14 Information shall not reveal or discuss such information to or with any person who is not entitled
15 to receive such information, except as set forth herein. If a party or any of its representatives,
16 including counsel, inadvertently discloses any Confidential Information or Highly Confidential
17 Information to persons who are not authorized to use or possess such material, the party shall
18 provide immediate written notice of the disclosure to the party whose material was inadvertently
19 disclosed. If a party has actual knowledge that Confidential Information or Highly Confidential
20 Information is being used or possessed by a person not authorized to use or possess that material,
21 regardless of how the material was disclosed or obtained by such person, the party shall provide
22 immediate written notice of the unauthorized use or possession to the party whose material is
23 being used or possessed. No party shall have an affirmative obligation to inform itself regarding
24 such possible use or possession.

25 7. In connection with discovery proceedings as to which a party submits Confidential
26 Information or Highly Confidential Information, all documents and chamber copies containing
27 Confidential Information or Highly Confidential Information which are submitted to the Court
28 shall be filed with the Court in sealed envelopes or other appropriate sealed containers. On the

1 outside of the envelopes, a copy of the first page of the document shall be attached. If
2 Confidential Information or Highly Confidential Information is included in the first page attached
3 to the outside of the envelopes, it may be deleted from the outside copy. The word
4 "CONFIDENTIAL" shall be stamped on the envelope and a statement substantially in the
5 following form shall also be printed on the envelope:

6 "This envelope is sealed pursuant to Order of the Court, contains Confidential
7 Information and is not to be opened or the contents revealed, except by Order of the
8 Court or agreement by the parties."

9 8. A party may designate as Confidential Information or Highly Confidential
10 Information documents or discovery materials produced by a non-party by providing written
11 notice to all parties of the relevant document numbers or other identification within thirty (30)
12 days after receiving such documents or discovery materials. Until the thirty (30) day period for
13 designation has lapsed, any documents or discovery materials produced by a non-party shall be
14 treated at Confidential Information. Any party or non-party may voluntarily disclose to others
15 without restriction any information designated by that party or nonparty as Confidential
16 Information or Highly Confidential Information, although a document may lose its confidential
17 status if it is made public. If a party produces materials designated Confidential Information or
18 Highly Confidential Information in compliance with this Order, that production shall be deemed
19 to have been made consistent with any confidentiality or privacy requirements mandated by local,
20 state or federal laws.

21 9. If a party contends that any material is not entitled to confidential treatment, such
22 party may at any time give written notice to the party or non-party who designated the material.
23 The party or non-party who designated the material shall have twenty (20) days from the receipt
24 of such written notice to apply to the Court for an order designating the material as confidential.
25 The party or non-party seeking the order has the burden of establishing that the document is
26 entitled to protection.
27
28

1 10. Notwithstanding any challenge to the designation of material as Confidential
2 Information or Highly Confidential Information, all documents shall be treated as such and shall
3 be subject to the provisions hereof unless and until one of the following occurs:

4 (a) the party or non-party who claims that the material is Confidential
5 Information or Highly Confidential Information withdraws such
6 designation in writing; or

7 (b) the party or non-party who claims that the material is Confidential
8 Information or Highly Confidential Information fails to apply to the Court
9 for an order designating the material confidential within the time period
10 specified above after receipt of a written challenge to such designation; or

11 (c) the Court rules the material is not Confidential Information or Highly
12 Confidential Information.

13 11. All provisions of this Order restricting the communication or use of Confidential
14 Information or Highly Confidential Information shall continue to be binding after the conclusion
15 of this action, unless otherwise agreed or ordered. Upon conclusion of the litigation, a party in the
16 possession of Confidential Information or Highly Confidential Information shall within sixty (60)
17 days either (a) return such documents to counsel for the party or non-party who provided such
18 information, or (b) destroy such documents. Whether the Confidential Information or Highly
19 Confidential Information is returned or destroyed, the receiving party must submit a written
20 certification to the producing party (and, if not the same person or entity, to the designating party)
21 by the 60 day deadline that (1) all the Confidential Information or Highly Confidential
22 Information that was returned or destroyed, and (2) affirms that the receiving party has not
23 retained any copies, abstracts, compilations, summaries or any other format reproducing or
24 capturing any of the Confidential Information or Highly Confidential Information.

25 Notwithstanding this provision, counsel are entitled to retain an archival copy of all pleadings,
26 motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence,
27 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert
28 work product, even if such materials contain Confidential Information or Highly Confidential

1 Information. Any such archival copies that contain or constitute Confidential Information or
2 Highly Confidential Information remain subject to this Stipulated Protective Order. The
3 conclusion of the litigation shall be deemed to be the later of (1) dismissal of all claims and
4 defenses in this action, with or without prejudice; and (2) final judgment herein after the
5 completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
6 including the time limits for filing any motions or applications for extension of time pursuant to
7 applicable law. After the conclusion of this action, this Court will retain jurisdiction to enforce
8 the terms of this Order.

9 12. Nothing herein shall be deemed to waive any applicable privilege or work product
10 protection, or to affect the ability of a party to seek relief for an inadvertent disclosure of material
11 protected by privilege or work product protection. Any witness or other person, firm or entity
12 from which discovery is sought may be informed of and may obtain the protection of this Order
13 by written advice to the parties' respective counsel or by oral advice at the time of any deposition
14 or similar proceeding.

15 13. In the event that any Confidential Information or Highly Confidential Information
16 is inadvertently produced without such designation, the party or non-party that inadvertently
17 produced the information without designation shall give written notice of such inadvertent
18 production promptly after the party or non-party discovers the inadvertent failure to designate
19 (but no later than fourteen (14) calendar days after the party or non-party discovers the
20 inadvertent failure to designate), together with a further copy of the subject information
21 designated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" (the "Inadvertent Production
22 Notice"). Upon receipt of such Inadvertent Production Notice, the party that received the
23 information that was inadvertently produced without designation shall promptly destroy the
24 inadvertently produced information and all copies thereof, or, at the expense of the producing
25 party or non-party, return such together with all copies of such information to counsel for the
26 producing party and shall retain only the newly-produced versions of that information that are
27 designated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL." This provision is not
28 intended to apply to any inadvertent production of any information or materials protected by

1 attorney-client or work product privileges, which inadvertent production is governed by Section
2 14 below.

3 14. In the event that any party or non-party inadvertently produces information that is
4 privileged or otherwise protected from disclosure during the discovery process ("Inadvertent
5 Production Material"), the following shall apply:

6 (a) Such inadvertent production or disclosure shall in no way prejudice or
7 otherwise constitute a waiver of, or estoppel as to, any claim of attorney-client privilege, attorney
8 work product protection, or other applicable protection in this case or any other federal or state
9 proceeding, provided that the producing party shall notify the receiving party in writing of such
10 protection or privilege promptly after the producing party discovers such materials have been
11 inadvertently produced.

12 (b) If a claim of inadvertent production is made, pursuant to this Stipulated
13 Protective Order, with respect to discovery material then in the custody of another party, that
14 party shall: (i) refrain from any further examination or disclosure of the claimed Inadvertent
15 Production Material; (ii) promptly make a good-faith effort to return the claimed Inadvertent
16 Production Material and all copies thereof (including summaries and excerpts) to counsel for the
17 producing party, or destroy all such claimed Inadvertent Production Material (including
18 summaries and excerpts) and certify in writing to that fact; and (iii) not disclose or use the
19 claimed Inadvertent Production Material for any purpose until further order of the Court expressly
20 authorizing such use.

21 (c) A party may move the Court for an order compelling production of the
22 Inadvertent Production Material on the ground that it is not, in fact, privileged or protected. The
23 motion shall be filed under seal and shall not assert as a ground for entering such an order the fact
24 or circumstance of the inadvertent production. The producing party retains the burden of
25 establishing the privileged or protected nature of any inadvertently disclosed or produced
26 information. While such a motion is pending, the Inadvertent Production Material at issue shall
27 be treated in accordance with Paragraph 14(b) above.
28

1 (d) If a party, in reviewing discovery material it has received from any other
2 party or any non-party, finds anything the reviewing party believes in good faith may be
3 Inadvertent Production Material, the reviewing party shall: (i) refrain from any further
4 examination or disclosure of the potentially Inadvertent Production Material; (ii) promptly
5 identify the material in question to the producing party (by document number or other equally
6 precise description); and (iii) give the producing party seven (7) days to respond as to whether the
7 producing party will make a claim of inadvertent production. If the producing party makes such a
8 claim, the provisions of Paragraphs 14(a)-(c) above shall apply.

9 15. The parties agree that should the production of source code become necessary,
10 they will need to amend or supplement the terms of this Order. To the extent production of
11 source code becomes necessary in this case, the parties will work expeditiously to propose
12 amendments to this Order to cover any production of source code.

13 16. If a party is served with a subpoena or a court order issued in other litigation that
14 compels disclosure of any Confidential Information or Highly Confidential Information, the
15 receiving party must:

16 (a) promptly notify in writing the designating party. Such notification shall
17 include a copy of the subpoena or court order;

18 (b) promptly notify in writing the party who caused the subpoena or order to
19 issue in the other litigation that some or all of the material covered by the subpoena or order is
20 subject to this Stipulated Protective Order. Such notification shall include a copy of this
21 Stipulated Protective Order; and

22 (c) cooperate with respect to all reasonable procedures sought to be pursued by
23 the designating party whose Confidential Information or Highly Confidential Information may be
24 affected.

25 If the designating party timely seeks a protective order, the party served with the subpoena
26 or court order shall not produce any Confidential Information or Highly Confidential Information
27 before a determination by the court from which the subpoena or order issued, unless the party has
28 obtained the designating party's permission. The designating party shall bear the burden and

1 expense of seeking protection in that court of its confidential material—and nothing in these
2 provisions should be construed as authorizing or encouraging a receiving party in this action to
3 disobey a lawful directive from another court.

4 17. The following additional terms apply to non-party discovery material:

5 (a) The terms of this Order are applicable to information produced by a non-
6 party in this action and designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL.”

7 Such information produced by non-parties in connection with this litigation is protected by the
8 remedies and relief provided by this Order. Nothing in these provisions should be construed as
9 prohibiting a non-party from seeking additional protections.

10 (b) In the event that a party is required, by a valid discovery request, to
11 produce a non-party’s confidential information in its possession, and the party is subject to an
12 agreement with the non-party not to produce the non-party’s confidential information, then the
13 party shall:

14 i. promptly notify in writing the requesting party and the non-party
15 that some or all of the information requested is subject to a confidentiality agreement with a non-
16 party;

17 ii. promptly provide the non-party with a copy of the Stipulated
18 Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific
19 description of the information requested; and

20 iii. make the information requested available for inspection by the non-
21 party.

22 (c) If the non-party fails to object or seek a protective order from this Court
23 within 28 days of receiving the notice and accompanying information, the receiving party may
24 produce the non-party’s confidential information responsive to the discovery request. If the non-
25 party timely seeks a protective order, the receiving party shall not produce any information in its
26 possession or control that is subject to the confidentiality agreement with the non-party before a
27 determination by the Court. Absent a court order to the contrary, the non-party shall bear the
28

burden and expense of seeking protection in this Court of its Confidential Information or Highly Confidential Information.

18. Nothing in this Stipulated Protective Order shall be construed to preclude any party from asserting in good faith that certain Confidential Information or Highly Confidential Information requires additional protections. The parties shall meet and confer to agree upon the terms of such additional protection. By stipulating to the entry of this Protective Order no party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no party waives any right to object on any ground to use in evidence of any of the material covered by this Stipulated Protective Order. Nothing in this Stipulated Protective Order abridges the right of any person to seek its modification by the Court in the future.

Part Two: Use of Confidential Materials in Court

The following provisions govern the treatment of Confidential Information or Highly Confidential Information used at trial or submitted as a basis for adjudication of matters other than discovery motions or proceedings. These provisions are subject to Rules 2.550, 2.551, 2.580, 2.585, 8.160, and 8.490 of the California Rules of Court and must be construed in light of those Rules.

19. A party that files with the Court, or seeks to use at trial, materials designated as Confidential Information or Highly Confidential Information, and who seeks to have the record containing such information sealed, shall submit to the Court a motion or an application to seal, pursuant to California Rule of Court 2.551.

20. A party that files with the Court, or seeks to use at trial, materials designated as Confidential Information or Highly Confidential Information by anyone other than itself, and who does not seek to have the record containing such information sealed, shall comply with either of the following requirements:

- (a) At least ten (10) business days prior to the filing or use of the Confidential Information or Highly Confidential Information, the submitting party shall give notice to all other parties, and to any non-party that designated the

1 materials as Confidential Information or Highly Confidential Information
2 pursuant to this Order, of the submitting party's intention to file or use the
3 Confidential Information or Highly Confidential Information, including
4 specific identification of the Confidential Information or Highly
5 Confidential Information. Any affected party or non-party may then file a
6 motion to seal, pursuant to California Rule of Court 2.551(b); or

7 (b) At the time of filing or desiring to use the Confidential Information or
8 Highly Confidential Information, the submitting party shall submit the
9 materials pursuant to the lodging-under-seal provision of California Rule of
10 Court 2.551(d). Any affected party or non-party may then file a motion to
11 seal, pursuant to the California Rule of Court 2.551(b), within ten (10)
12 business days after such lodging. Documents lodged pursuant to California
13 Rule of Court 2.551(d) shall bear a legend stating that such materials shall
14 be unsealed upon expiration of ten (10) business days, absent the filing of a
15 motion to seal pursuant to Rule 2.551(b) or Court order.

16 21. In connection with a request to have materials sealed pursuant to Paragraph 12 or
17 Paragraph 13, the requesting party's declaration pursuant to California Rule of Court 2.551(b)(1)
18 shall contain sufficient particularity with respect to the particular Confidential Information or
19 Highly Confidential Information and the basis for sealing to enable the Court to make the findings
20 required by California Rule of Court 2.550(d).

21 **IT IS SO STIPULATED.**

22
23 DATED: _____, 2016

24 **PERKINS COIE LLP**

25 By: _____
26 Julie E. Schwartz
27 *Attorneys for Defendant*
28 *Facebook, Inc.*

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DATED: _____, 2016

BIRNBAUM & GODKIN, LLP

By: _____
David Godkin

Attorneys for Plaintiff
SIX4THREE, LLC

IT IS SO ORDERED.

DATED: 10/24, 2016



JUDGE OF THE SUPERIOR COURT

CERTIFICATION

I hereby certify my understanding that Confidential Information or Highly Confidential Information is being provided to me pursuant to the terms and restrictions of the Stipulation and Protective Order Regarding Confidential Information filed on _____, 2016, in *Six4Three, LLC v. Facebook, Inc.*, San Mateo County Superior Court Case No. CIV533328 ("Order"). I have been given a copy of that Order and read it.

I agree to be bound by the Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I will not reveal the Confidential Information or Highly Confidential Information to anyone, except as allowed by the Order. I will maintain all such Confidential Information or Highly Confidential Information, including copies, notes, or other transcriptions made therefrom, in a secure manner to prevent unauthorized access to it. No later than thirty (30) days after the conclusion of this action, I will return the Confidential Information or Highly Confidential Information, including copies, notes, or other transcriptions made therefrom, to the counsel who provided me with the Confidential Information or Highly Confidential Information. I hereby consent to the jurisdiction of the San Mateo County Superior Court for the purpose of enforcing the Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ located at the address of _____ as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

I declare under penalty of perjury that the foregoing is true and correct and that this certificate is executed this ____ day of _____, 2016, at _____.

By: _____

Address: _____

Phone: _____

**[Redacted Version of
Document Proposed to
be Filed under Seal]**

EXHIBIT 12

From: David Godkin
Sent time: 03/23/2018 11:30:30 AM
To: [REDACTED]@gmail.com>
Subject: Extensive evidence regarding Facebook's treatment of friend data and user privacy

Senator [REDACTED]

My name is David Godkin. My firm has obtained extensive discovery of communications between Zuckerberg and numerous other Facebook executives and employees regarding Facebook's treatment of user data and third party developers from 2007 to 2015. I believe the information we have uncovered is highly relevant to the Cambridge Analytica investigation and demonstrates clearly that Facebook violated the privacy of CA citizens and its prior settlement with the FTC.

I have attempted to summarize the evidence below. This summary does not do the wealth of evidence we have obtained justice, which is why I'm hoping there is an appropriate mechanism for your staff to review this information to ensure the public debate in CA around this issue is fully informed.

I look forward to hearing from you.

Regards,

David

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As you can see, there is a lot here, and it would take months or even years for CA legislators and regulators to obtain discovery of this information from Facebook, if at all. We hope to identify an appropriate mechanism for CA legislators and regulators to evaluate the evidence to come to their own conclusions regarding its impact on Facebook's culpability in the Cambridge Analytica matter.

BG000152

Get [Outlook for iOS](#)

**[Redacted Version of
Document Proposed to
be Filed under Seal]**

EXHIBIT 13

From: David Godkin
Sent time: 03/22/2018 12:24:19 PM
To: [REDACTED]@ico.org.uk; [REDACTED]@ico.org.uk; [REDACTED]@ico.org.uk; [REDACTED]@ico.org.uk
Subject: Extensive evidence regarding Facebook's treatment of friend data and user privacy

Commissioner Denham and Staff:

My name is David Godkin. My firm has obtained extensive discovery of communications between Zuckerberg and numerous other Facebook executives and employees regarding Facebook's treatment of user data and third party developers from 2007 to 2015. I believe the information we have uncovered is highly relevant to the Cambridge Analytica investigation and demonstrates clearly that Facebook violated the privacy of UK citizens and its prior settlement with the FTC.

I have attempted to summarize the evidence below. This summary does not do the wealth of evidence we have obtained justice, which is why I'm hoping we can speak with your office to determine if there is an appropriate mechanism for your team to evaluate the evidence yourselves.


I look forward to hearing from you.

Regards,

David

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A large, solid black rectangular area covering the bottom half of the page, indicating that the content has been redacted.



As you can see, there is a lot here, and it would take months or even years for ICO to obtain discovery of this information from Facebook. We hope to identify an appropriate mechanism for your team to access it and determine its relevance to your current efforts.

BG000154

Sent from my iPhone

**[Redacted Version of
Document Proposed to
be Filed under Seal]**

EXHIBIT 14

From: David Godkin
Sent time: 03/26/2018 02:51:40 PM
To: [REDACTED]@doj.state.or.us; [REDACTED]@doj.state.or.us
Cc: James Kruzer
Subject: Extensive evidence regarding Facebook's treatment of friend data and user privacy

[REDACTED]

My name is David Godkin. My firm has obtained extensive discovery of communications between Zuckerberg and numerous other Facebook executives and employees regarding Facebook's treatment of user data and third party developers from 2007 to 2015. I believe the information we have uncovered is highly relevant to the Cambridge Analytica investigation and demonstrates clearly that Facebook violated the privacy of Oregon citizens and its prior settlement with the FTC.

I have attempted to summarize the evidence below. This summary does not do the wealth of evidence we have obtained justice, which is why I'm hoping there is an appropriate mechanism for your staff to review this information to ensure the public debate in Oregon around this issue is fully informed.

I look forward to hearing from you.

Regards,

David

[REDACTED]

As you can see, there is a lot here, and it would take months or even years for Oregon officials to obtain discovery of this information from Facebook, if at all. We hope to identify an appropriate mechanism for your office to evaluate the evidence to come to its own conclusions regarding its impact on Facebook's culpability in the Cambridge Analytica matter.

EXHIBIT 15

From: [REDACTED]@washpost.com>
Sent time: 11/27/2018 05:39:33 PM
To: Theodore Kramer <theodore.kramer@gmail.com>; Thomas Scaramellino <thomas.scaramellino@gmail.com>
Cc: David Godkin; Stuart Gross <sgross@grosskleinlaw.com>; James Kruzer
Subject: from [REDACTED] at WashPost -- URGENT !!

Hi Ted and Tom,
I'm getting a bit worried since I have not heard from you in several days. We are extremely eager to do the story now that there is an opportunity for the documents to be released. I understand that Collins said that will happen in a week, but I'm sure they could leak before—and of course we want to be first. The challenge is that until now we have only talked off the record, so it will be hard to use material from our conversations if I don't hear from you. In addition, the trove is big as we know, and I know you had promised to offer some guidance on how to go through it.

I would really appreciate if you could let me know what is happening either way – even if it is to say that you can't speak. You can reach me on my cell or on Signal at [REDACTED]

Thanks very much.

[REDACTED]

--

[REDACTED]

**[Redacted Version of
Document Proposed to
be Filed under Seal]**

EXHIBIT 16

From: David Godkin
Sent time: 03/20/2018 09:53:18 AM
To: [REDACTED]@stern.nyu.edu; [REDACTED]
Subject: Facebook Platform Anti-Competition Lawsuit – 30 Minute Phone Call
Attachments: Background for [REDACTED].docx

Dear [REDACTED]

My name is David Godkin, and I have represented Six4three, LLC, a software developer, in ongoing litigation with Facebook for almost three years now regarding repeated violations of anti-competition laws in connection with Facebook Platform. [REDACTED]
[REDACTED]

I hope you have time to read the attached summary of our complaint and various issues in the case. We have obtained emails from Zuckerberg and numerous other Facebook executives and employees involved in implementing the bait and switch scheme over a
[REDACTED]

If this piques your interest, I would like to setup a 30-minute call. I would kindly ask that you not share any of this information yet as it is embargoed for a particular media outlet at this time. The evidence we have uncovered is currently subject to a Protective Order in California state court. We are hoping to unseal the information this summer, but that will be up to the court. After our call, if you remain interested in speaking on this issue, which I think puts a lot of meat on the bones of some of your core arguments, then we would be willing to share the evidence with you so long as you agree to abide by the Protective Order (similar to an NDA). You could use the evidence to inform your views and paint a picture, but not share any of it directly until the court agrees for it to go public.

My client's interest here is simply in bringing Zuckerberg's conduct into full public light. It is disappointing that the media continues to describe Facebook as "not doing enough" – far from it. The company, at Zuckerberg's explicit direction, has engaged in malicious and deceptive conduct throughout Platform's history and is currently directing the same movie for Messenger Platform. It needs to be stopped. We have the evidence to bring the full extent of Zuckerberg's conduct into public view. I hope you have interest in exploring ways we may be able to work together on this.

Sincerely,

David Godkin
Birnbaum & Godkin, LLP
Boston

BG000425




California Civil Jury Instructions

Breach of Contract (303). A developer must prove that (1) developer and Facebook entered into a contract (not disputed); (2) developer did all or substantially all of the significant things that the contract required it to do (not disputed); (3) Facebook failed to do something that the contract required it to do or that Facebook did something that the contract prohibited it from doing; (4) developer was harmed (not disputed); (5) Facebook's breach of contract was a substantial factor in developer's harm (not disputed).

To prove 3, the developer must show that FB failed to provide rights to the data as required under the clause "we give you all rights necessary to use the code, APIs, data and tools 643 receives from Facebook" and/or that FB violated the contract by weaponizing FB Platform for anti-competitive reasons, contrary to its repeated representations that induced the developer to enter into the contract.

Intentional Misrepresentation (1900). A developer must prove that (1) Facebook represented to developers that a fact was true (e.g. level competitive playing field); (2) Facebook's representation was false (e.g. the playing field was not level); (3) Facebook knew that the representation was false when it made it, or that it made the representation recklessly and without regard for its truth (Facebook knew the playing field was not level); (4) Facebook intended that developers rely on the representation (the point of Facebook Platform was for developers to build applications) ; (5) developers reasonably relied on the representation (tens of thousands of developers cannot all be unreasonable); (6) developers were harmed (the *WSJ* has reported on this harm); and (7) developers' reliance on Facebook's representation was a substantial factor in causing its harm (the *WSJ* has reported on this nexus between Facebook's conduct and the harm).

Concealment (1901). A developer must prove that (1) Facebook and the developer were in some kind of fiduciary or business relationship and that Facebook intentionally failed to disclose certain facts, or disclosed some facts but intentionally failed to disclose others, or intentionally failed to disclose certain facts that were known only to Facebook, or prevented the developer from discovering certain facts (all developers enter into a contractual relationship with Facebook); (2) the developer did not know the concealing facts (developers did not know Zuckerberg decided to shut down Graph API in 2012); (3) if the concealed facts had been disclosed, the developer would have behaved differently (developers would not have built apps after 2012 if they had known of Zuckerberg's decision); (4) the developer was harmed (many apps shut down or pivoted); and (5) Facebook's concealment was a substantial factor in causing the developer's harm.

Negligent Misrepresentation (1903). A developer must prove that (1) Facebook represented to the developer that a fact was true (e.g. level competitive playing field); (2) Facebook's representation was not true (e.g. the playing field was not level); (3) Although Facebook may have honestly believed it was true, Facebook had no reasonable grounds for believing it was true when Facebook made it (Facebook could not have had reasonable grounds as it designed and managed an unfair playing field); (4) Facebook intended the developer to rely on the representation (Zuckerberg publicly admits he was trying to entice developers); (5) the developer reasonably relied on the representation (tens of thousands of developers cannot all be unreasonable); (6) the developer was harmed (the *WSJ* has reported on this harm); and (7) the developer's reliance on the representation was a substantial factor in its harm (the *WSJ* has reported on the nexus between Facebook's conduct and this harm).

Intentional Interference with Contractual Relations (2201). A developer must prove (1) that there was a contract between the developer and its users (Facebook's SRR requires developers to maintain these contracts); (2) Facebook knew of the contract (Facebook must have known if it requires them); (3) Facebook's conduct prevented performance or made performance more expensive or difficult (any app that relied on restricted APIs broke in some way, violating terms of service for that app); (4) Facebook intended to disrupt the performance of the contract or knew that disruption of performance was substantially certain to occur (Facebook maintained lists of all the apps that would be disrupted and so clearly knew disruption would occur); (5) the developer was harmed; and (6) Facebook's conduct was a substantial factor in the developer's harm.

EXHIBIT 17

From: [REDACTED]@theguardian.com>
Sent time: 05/04/2018 05:58:12 PM
To: Theodore Kramer <theodore.kramer@gmail.com>
Cc: James Kruzer
Subject: Re: Follow up from our call

Hi Ted,

Sorry for the delay. I'm trying to get things moving in-house and it's been a bit slow. The [REDACTED] is keen to follow up though. He's going to speak to legal counsel and get an idea of involvement/cost. I also remembered I had some people from Yale Law school who got in touch before who were keen to help with the investigation and offered pro-bono US legal support, so I have a back-up plan.

If you were able to send me any further suggestions to show legal counsel of what's required that might be helpful. I spoke to [REDACTED] earlier and he said he'd be happy for you to get in touch also. [REDACTED]

[REDACTED]

On 4 May 2018 at 22:28, Theodore Kramer <theodore.kramer@gmail.com> wrote:

Hi [REDACTED]

Just checking in to see if you had any questions or wanted to jump on the phone this weekend or next week.

Thanks and talk soon!

On Mon, Apr 30, 2018 at 9:08 AM Theodore Kramer <theodore.kramer@gmail.com> wrote:

BACKGROUND | NON-ATTRIBUTION

[REDACTED]

A case management conference was held this past Friday. We are filing an opposition to the defendants' Anti-SLAPP motions on 5/17 that will contain approximately 2,000 pages of evidence supporting our position that the conduct we allege in our complaint, namely that Facebook's entire business today, and virtually all its privacy scandals these past few years, are the fruits of a bait and switch scheme designed by Zuckerberg in 2012 to keep Facebook's business from collapsing by weaponizing user data in a manner that defrauded developers and users. This evidence goes to the very heart of the Cambridge Analytica scandal, and much more. These motions will be heard on Monday, July 2, at 9 a.m.

Facebook and the individual defendants will move to seal the evidence we submit no later than 5/25. If you would like to convince the Court that this evidence should be available to the public, you should file a motion seeking permission to participate as amicus curiae. Your motion, along with your proposed amicus brief, must be filed and served by June 6 so that it can be heard by the Court on July 2 at the same hearing at which the Court will consider numerous motions in the case. If the Court denies the motion to seal, the evidence would be transferred immediately to the public case file. There is a strong public interest argument here. (In my view, the public interest argument doesn't get much stronger when you're talking about conduct that defrauds 1/3 of the world's population and tens of millions of businesses.)

Please let me know asap whether you intend to file a motion seeking leave to file an amicus brief. I am happy to speak with your editorial and/or legal department and have our team prepare a draft motion or template if that would be helpful. I look forward to your answer.

We have discussed internally and I would be willing to go on record at some point with any organizations who file amicus briefs.

Finally, we would love an introduction to [REDACTED] and anyone from Prisoner International. We would like them to consider

Finally, we would love an introduction to [REDACTED] and anyone from Privacy International. We would like them to consider filing amicus brief too as it will only strengthen our argument to get the court to unseal the evidence.

Thanks.

Ted

On Fri, Apr 27, 2018 at 3:40 AM [REDACTED] <[\[REDACTED\]@theguardian.com](mailto:[REDACTED]@theguardian.com)> wrote:

Hi Theodore,

I just wanted to say that I haven't forgotten you. I've been in touch with [REDACTED] and he was up for the idea of the Guardian petitioning the court for disclosure and was going to talk to the [REDACTED] about how we would go about doing this. I've just been waylaid by other matters...but wanted to check in and see if there's any further news but also to say we're still interested in pursuing.

Is there any update? I also spoke to [REDACTED] He directed me toward the right person at Privacy International to talk to but I haven't managed to have that conversation yet. Could you perhaps update me with any developments your end and I will try and see what I can do to push things along this end? thanks very much, [REDACTED]

On 29 March 2018 at 22:59, Theodore Kramer <theodore.kramer@gmail.com> wrote:

Hi [REDACTED]

Thanks for your time today. As promised, please find attached our Fifth Amended Complaint and a summary of the complaint.

I would recommend starting with the summary, which references the public allegations in the complaint to ensure that no information is being communicated that is subject to confidentiality in the litigation.

I look forward to hearing from you and connecting with the folks you mentioned.

Thanks.

Ted

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BG007208

EXHIBIT 18

From: Thomas Scaramellino <thomas.scaramellino@gmail.com>
Sent time: 05/21/2018 06:46:17 PM
To: [REDACTED]@theguardian.com
Cc: Ted Kramer <ted@six4three.com>; [REDACTED]@mkslex.com; James Kruzer; David Godkin
Subject: Re: Six4Three v. Facebook Application and Amicus Brief

Hi [REDACTED]

Thanks for the thorough update. We have briefly conferred and think we can get comfortable with this but want to address a few things tmrw morning. What is the best time to speak then? I am on U.S. pacific time now but don't mind waking up in the middle of the night to discuss. Just let us know a good time and we can circulate a dial-in.

Here are a few thoughts to consider:

- We don't think it's a good idea to disclose [REDACTED] as an expert witness now. It gives FB's lawyers something to distract the court about by making up issues, which they have been very good at doing these past three years. I'm not sure if he could be an anonymous source verifying our allegations without disclosing him as an expert witness in the case. I'd like your thoughts on that.
- Ted mentioned that [REDACTED] can confirm some of our allegations in the complaint. Would he or others be willing to do so on record? We are very much hoping that the first reporting on this can verify at least a significant portion of the allegations to mitigate the impact of FB's counter punch. Since we don't want to reveal [REDACTED] we are wondering who might fill this gap;
- As for FB's counter-punch, we do not want to open any doors that make it easier for them to malign Ted or his company. We don't want this to be about Ted's company or app at this point, because it will distract from Facebook's own conduct, which had nothing to do with Ted's company. We also want to anticipate FB using its influence over the media to dampen this story very quickly after you print; there will need to be follow-ups prepared that effectively accomplish this. Would like to hear your thoughts;
- Ted and the company would remain off the record at this point. It is possible that the lead counsel on the case, David, would provide a brief statement saying we have no comment on the article but are confident the evidence will back up all of our allegations and are seeking to unseal the evidence in court on July 2;
- We would hope to receive assurance from the Guardian that it will be filing an application/brief to support unsealing regardless of what FB may do as a result of your decision to publish now - the most important thing for us is to obtain support in front of the judge that these documents are crucial to this ongoing public debate. We won't do anything to jeopardize that goal so would need your firm commitment on this. We don't want to win any battles only to lose the war.

Hope this is helpful context. Look forward to discussing tomorrow.

Tom

On Mon, May 21, 2018 at 2:38 PM, [REDACTED]@theguardian.com> wrote:

Hi all,

Thanks so much for your time in various ways today. Great to meet Ted and hear more about the fight so far...

So, I thought it might be helpful to lay out our thoughts at the moment. This is all up for debate depending on what you think. The

aim is to do this in accordance with what you want with the intention of trying to be as impactful as possible.

To that end, we thought Zuck's evidence to the EU parliament tomorrow evening is an ideal hook for doing a set of first reports - based on the publicly available docs. We could time the web publication for when Zuck is about to, or is in the process of, giving evidence.

I've talked at length with my colleague [REDACTED] and my editor, [REDACTED] and we thought the ideal would be:

- A main news story. This focuses on the central allegations laid out in the filings. What Facebook is trying to do to stop the underlying docs being made public. The Guardian's decision to file a brief in support in concert with other news orgs. And - ideally - some supporting quotes from [REDACTED] I understand these need to be anonymous but it would still be really useful to have these I think.
- A secondary news story that focusses on the privacy abuses, mass data harvesting via Android etc.
- And, ideally, a background piece that is a bit more discursive. This would have something about the legal fight so far, the other developers affected, the coming Facebook PR offensive etc. It would just be slightly more colourful, easy-to-read.

This is all working on the assumption that you don't wish to go on the record as yet - though maybe there's a quote about the legal fight, or your confidence in being vindicated etc that you might consider - but uses a bit of information on background. So, there's a bit of an explanation that lays out the uphill battle it's been to get this far and what Facebook's blocking moves have been.

But up to you. If this does sound like a good plan, I'd ideally need to speak to you early UK time. We'd need to sell this into the Guardian news desk early so they are prepped and ready to run. As well as launching online tomorrow pm, we'd also try and get you on the front page for Wednesday am, and if so, that needs to be teed up as early as possible in advance. I think the timing is good, because unless there's another big news event (always possible) Zuck is probably the front page news anyway.

I'd also be interested in learning more about the ins and outs of the anti-SLAPP filing as I think that may make an interesting focus in terms of Facebook's blocking moves.

Anyway, I'll leave this with you but if tomorrow UK morning (I can do as early as necessary) works for you, that would be ideal. But obviously I understand you all have busy schedules and in which case, we can delay until later.

[REDACTED]

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BG006394

EXHIBIT 19

From: [REDACTED]@theguardian.com>
Sent time: 05/22/2018 08:11:37 AM
To: Thomas Scaramellino <thomas.scaramellino@gmail.com>
Cc: David Godkin; [REDACTED]@mkslex.com>; James Kruzer; Ted Kramer <ted@six4three.com>
Subject: Re: Six4Three v. Facebook Application and Amicus Brief

Agh. Hi all. I got caught on a call and hadn't realised the time. Just called in but you're not there...have I missed you.

On 22 May 2018 at 12:48, Thomas Scaramellino <thomas.scaramellino@gmail.com> wrote:

Yes, let's talk in about 10 min. Let's use this conference line.

Global dial-in: (720) 362-6860

Code: 21863759

I have caught up with David, Jim and Ted on your last note; it will be just me on the line.

On Tue, May 22, 2018 at 1:40 AM, [REDACTED]@theguardian.com> wrote:

Hi there,

Yes, understood. Can we talk 8am your time? (I think that's 1pm my time not 2pm). The Guardian's counsel has said that we need to research and file our own independent brief that he puts in the range of \$12-15,000 costwise. I've told them how important it is and how the primary consideration here should be editorial/journalistic first and cost second but there will obviously be some discuss around this which won't happen until US business hours so, depending on how that goes, we may need to delay reporting. But let's speak later if that's okay.

Thanks, [REDACTED]

On 22 May 2018 at 01:29, Thomas Scaramellino <thomas.scaramellino@gmail.com> wrote:

The key thing with [REDACTED] is that if the article identifies him as an expert witness or bases his confirmation of the allegations on the fact that he has reviewed the evidence, then Facebook will cry foul at the hearing and distract the judge. We have no obligation right now to disclose a new expert witness to them but that won't matter. They will fabricate an issue about it anyway that could be just enough of a sideshow to derail our efforts on July 2. They will claim (falsely) that we improperly revealed evidence and that very well could cause the judge to step back and delay his ruling on making the evidence public.

On Mon, May 21, 2018 at 5:19 PM Thomas Scaramellino <thomas.scaramellino@gmail.com> wrote:

Ok very helpful. Why don't you work on getting US Guardian confirmation on filing and continue to plan to move forward and maybe we can all talk around 8am Eastern US time, which I believe is 2pm your time. If we need to do earlier just lmk but I think you can keep ball rolling as we seem to be on same page. I think anonymous quotes from [REDACTED] would be fine so long as he isn't identified as an expert witness and you have someone like [REDACTED] willing to go on record. An article entirely based on anonymous sources will be much more susceptible to counter attack so would very much prefer to avoid. Let me know how that sounds.

On Mon, May 21, 2018 at 4:01 PM [REDACTED] <[\[REDACTED\]@theguardian.com](mailto:[REDACTED]@theguardian.com)> wrote:

Sorry, and on final point, totally agree. I haven't managed to get hold of [REDACTED] to discuss lawyers' call but, yes, I agree, Guardian must give full commitment. In UK, that has been cleared & agreed, they are just waiting for US legal feedback

On Mon, 21 May 2018 at 23:59, [REDACTED] <[\[REDACTED\]@theguardian.com](mailto:[REDACTED]@theguardian.com)> wrote:

Hi Thomas,

Thanks. All good points and I think generally we are on same page. Happy to work toward whatever you feel best approach. Re [REDACTED] understood, though would still like to use anon quotes if possible. Re [REDACTED] that is what I am trying to do..he is up for it but needs to run it by his lawyer.

Re Facebook pushback, most important thing is to simply address (even if v briefly) major lines of attack otherwise one opens oneself up for counter-attack.

Brief quotes from counsel sounds good plan. Plus, ideally, some context & background (but doesn't have to be extensive.)

Re time of call, I'm completely flexible-whatever works best for you..but ideally to present news plan by latest midday UK time. And the earlier the better in terms of being able to use info to inform reporting.

Thanks! [REDACTED]

On Mon, 21 May 2018 at 23:46, Thomas Scaramellino <thomas.scaramellino@gmail.com> wrote:

Hi [REDACTED]

Thanks for the thorough update. We have briefly conferred and think we can get comfortable with this but want to address a few things tmrw morning. What is the best time to speak then? I am on U.S. pacific time now but don't mind waking up in the middle of the night to discuss. Just let us know a good time and we can circulate a dial-in.

Here are a few thoughts to consider:

- We don't think it's a good idea to disclose [REDACTED] as an expert witness now. It gives FB's lawyers something to distract the court about by making up issues, which they have been very good at doing these past three years. I'm not sure if he could be an anonymous source verifying our allegations without disclosing him as an expert witness in the case. I'd like your thoughts on that.
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- We would hope to receive assurance from the Guardian that it will be filing an application/brief to support unsealing regardless of what FB may do as a result of your decision to publish now - the most important thing for us is to obtain support in front of the judge that these documents are crucial to this ongoing public debate. We

us is to obtain support in front of the judge that these documents are crucial to this ongoing public debate. We won't do anything to jeopardize that goal so would need your firm commitment on this. We don't want to win any battles only to lose the war.

Hope this is helpful context. Look forward to discussing tomorrow.

Tom

On Mon, May 21, 2018 at 2:38 PM, [REDACTED]@theguardian.com> wrote:

Hi all,

Thanks so much for your time in various ways today. Great to meet Ted and hear more about the fight so far...

So, I thought it might be helpful to lay out our thoughts at the moment. This is all up for debate depending on what you think. The aim is to do this in accordance with what you want with the intention of trying to be as impactful as possible.

To that end, we thought Zuck's evidence to the EU parliament tomorrow evening is an ideal hook for doing a set of first reports - based on the publicly available docs. We could time the web publication for when Zuck is about to, or is in the process of, giving evidence.

I've talked at length with my colleague [REDACTED] and my editor, [REDACTED] and we thought the ideal would be:

- A main news story. This focuses on the central allegations laid out in the filings. What Facebook is trying to do to stop the underlying docs being made public. The Guardian's decision to file a brief in support in concert with other news orgs. And - ideally - some supporting quotes from [REDACTED] I understand these need to be anonymous but it would still be really useful to have these I think.
- A secondary news story that focusses on the privacy abuses, mass data harvesting via Android etc.
- And, ideally, a background piece that is a bit more discursive. This would have something about the legal fight so far, the other developers affected, the coming Facebook PR offensive etc. It would just be slightly more colourful, easy-to-read.

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But up to you. If this does sound like a good plan, I'd ideally need to speak to you early UK time. We'd need to sell this into the Guardian news desk early so they are prepped and ready to run. As well as launching online tomorrow pm, we'd also try and get you on the front page for Wednesday am, and if so, that needs to be teed up as early as possible in advance. I think the timing is good, because unless there's another big news event (always possible) Zuck is probably the front page news anyway.

I'd also be interested in learning more about the ins and outs of the anti-SLAPP filing as I think that may make an interesting focus in terms of Facebook's blocking moves.

Anyway, I'll leave this with you but if tomorrow UK morning (I can do as early as necessary) works for you, that would be ideal. But obviously I understand you all have busy schedules and in which case, we can delay until later.

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EXHIBIT 20

From: [REDACTED]@turner.com>
Sent time: 05/31/2018 01:47:29 PM
To: Thomas Scaramellino <thomas.scaramellino@gmail.com>
Cc: [REDACTED] [REDACTED] [REDACTED]@gmail.com>; David Godkin; Stuart Gross <sgross@grosskleinlaw.com>; James Kruzer
Subject: Re: FB Motion to Seal

So its unlikely the documents will be released today, correct? Thats what our lawyers are telling us.

Sent from my iPhone

> On May 31, 2018, at 5:17 PM, Thomas Scaramellino <thomas.scaramellino@gmail.com> wrote:

>

> We are still waiting to hear back from the clerk. Most likely scenario is we stick with current plan of filing amicus brief. We will let you know. They filed their belated motion to seal late last night. Please see attached. Let's setup a call to discuss. Pls circulate with your team. Best, Tom

>

> <2018.05.30 FINAL Miller Decl ISO FB's Mtn to Seal.pdf>

> <2018.05.30 FINAL PO Granting FB's Mtn to Seal.pdf>

> <2018.05.30 FINAL Proof of Service.pdf>

> <2018.05.30 FINAL FB's NOM and Mtn to Seal w MPA.pdf>

BG002164

EXHIBIT 21

From: [REDACTED] <[REDACTED]@openmarketsinstitute.org>
Sent time: 05/31/2018 02:49:41 PM
To: Thomas Scaramellino <thomas.scaramellino@gmail.com>; [REDACTED] <[REDACTED]@openmarketsinstitute.org>; [REDACTED] <[REDACTED]@openmarketsinstitute.org>
Cc: James Kruzer; David Godkin; Stuart Gross <sgross@grosskleinlaw.com>; [REDACTED] <[REDACTED]@gmail.com>
Subject: Re: FB Motion to Seal

Thanks, Thomas. Do you (or one of your colleagues) have time to chat tomorrow?

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

From: Thomas Scaramellino <thomas.scaramellino@gmail.com>
Sent: Thursday, May 31, 2018 12:21:19 PM
To: [REDACTED]
Cc: James Kruzer; David S. Godkin; Stuart Gross; [REDACTED]
Subject: FB Motion to Seal

We are still waiting to hear back from the clerk. Most likely scenario is we stick with current plan of filing amicus brief. They filed their belated motion to seal late last night. Please see attached. Let's setup a call to discuss. I am very busy today but perhaps one of the other attorneys has time today. If not, I'm available tmrw or over wknd. What is your status on filing a brief? Best, Tom

EXHIBIT 22

From: [REDACTED]
Sent time: 05/16/2018 04:45:00 AM
To: Thomas Scaramellino <thomas.scaramellino@gmail.com>; David Godkin
Cc: [REDACTED]@politico.eu
Subject: Contact

Hi all,

[REDACTED] meet Thomas and David who are involved in the Six4Three litigation.

Thomas, David, meet [REDACTED] who works at POLITICO Europe (very connected to the Brussels sphere),

We should organise a call.

One aspect that would definitely be in the public interest, and is not developed so far in the case, is to highlight how data protection laws can be used to further entrench the advantages of platforms. This would be particularly salient in the application of Article 20 on data portability of the GDPR, a very forward looking problem.

Here are some tweets exchanged in March around the Cambridge Analytica scandal:



They show how Alex Stamos (CSO FB) thinks of app access as enabling data portability. But of course as he says, he "work[s] on security, not strategy". I assume that means he doesn't control the developer terms, which can of course be used to slip in more (anti-competitive) conditions.

EXHIBIT 23

From: [REDACTED]@me.com>
Sent time: 04/30/2018 04:59:46 PM
To: David Godkin
Subject: Re: 643 v. Facebook

The editors are considering. ... I'll let you know. ... We may need to talk. I'm not sure we have enough yet to go on. But as I said, haven't read everything yet.

On Apr 30, 2018, at 12:38 PM, David Godkin <godkin@birnbaumgodkin.com> wrote:

As discussed, we are filing an opposition to the defendants' Anti-SLAPP motions on 5/17 that will contain approximately 2,000 pages of evidence supporting our position that the conduct we allege in our complaint, namely that Facebook's entire business today, and virtually all its privacy scandals these past few years, are the fruits of a bait and switch scheme designed by Zuckerberg in 2012 to keep Facebook's business from collapsing by weaponizing user data in a manner that defrauded developers and users. This evidence goes to the very heart of the Cambridge Analytica scandal, and much more. These motions will be heard on Monday, July 2, at 9 a.m.

Facebook and the individual defendants will move to seal the evidence we submit no later than 5/25. If Bloomberg would like to convince the Court that this evidence should be available to the public, you should file a motion seeking permission to participate as amicus curiae.

Your motion, along with your proposed amicus brief, must be filed and served by June 6 so that it can be heard by the Court on July 2 at the same hearing at which the Court will consider numerous motions in the case. If the Court denies the motion to seal, the evidence would be transferred immediately to the public case file. There is a strong public interest argument here. (In my view, the public interest argument doesn't get much stronger when you're talking about conduct that defrauds 1/3 of the world's population and tens of millions of businesses.)

Please let me know asap whether you intend to file a motion seeking leave to file an amicus brief. Our team could prepare a draft motion or template if that would be helpful. I look forward to hearing from you.

David

From: [REDACTED]@me.com>
Sent: Saturday, April 28, 2018 6:40 PM
To: David Godkin <godkin@birnbaumgodkin.com>
Subject: Re: 643 v. Facebook

Thx David. Good meeting you yesterday. Look forward to reading the amended complaint. Hoping it will shed some light on Facebook's policies.

Sent from my iPhone

On Apr 28, 2018, at 11:23 AM, David Godkin <godkin@birnbaumgodkin.com> wrote:

[REDACTED]

It was nice to meet you yesterday. I have attached the Fifth Amended Complaint which is the operative complaint on file and publicly available, as well as a much shorter summary with cites to the Fifth Amended Complaint. If you would like to set up a call with my client on background, please let me know.

Regards,

David Godkin

<Summary of Complaint.pdf>

<FILED Fifth Amended Complaint.pdf>

BG000855

**[Redacted Version of
Document Proposed to
be Filed under Seal]**

EXHIBIT 24

From: David Godkin
Sent time: 04/30/2018 03:21:32 PM
To: James Kruzer, [REDACTED]@MassMail.State.MA.US>; [REDACTED]@state.ma.us>
Cc: [REDACTED]@state.ma.us>
Subject: RE: Connecting with David Godkin

[REDACTED]

A case management conference was held this past Friday. We are filing an opposition to the defendants' Anti-SLAPP motions on 5/17 that will contain approximately 2,000 pages of evidence supporting our position that the conduct we allege in our complaint, namely that Facebook's entire business today, and virtually all its privacy scandals these past few years, are the fruits of a bait and switch scheme designed by Zuckerberg in 2012 to keep Facebook's business from collapsing by weaponizing user data in a manner that defrauded developers and users. This evidence goes to the very heart of the Cambridge Analytica scandal, and much more. These motions will be heard on Monday, July 2, at 9 a.m.

Facebook and the individual defendants will move to seal the evidence we submit no later than 5/25. If you would like to convince the Court that this evidence should be available to the public, you should file a motion seeking permission to participate as amicus curiae. It might make sense for a number of the state AG's to join together for this purpose.

Your motion, along with your proposed amicus brief, must be filed and served by June 6 so that it can be heard by the Court on July 2 at the same hearing at which the Court will consider numerous motions in the case. If the Court denies the motion to seal, the evidence would be transferred immediately to the public case file. There is a strong public interest argument here. (In my view, the public interest argument doesn't get much stronger when you're talking about conduct that defrauds 1/3 of the world's population and tens of millions of businesses.)

Please let me know asap whether you intend to file a motion seeking leave to file an amicus brief. Our team could prepare a draft motion or template if that would be helpful. I look forward to hearing from you.

David Godkin

From: James Kruzer
Sent: Wednesday, March 28, 2018 10:48 AM
To: [REDACTED]@MassMail.State.MA.US>; David Godkin <godkin@birnbaumgodkin.com>; [REDACTED]@state.ma.us>
Cc: [REDACTED]@state.ma.us>
Subject: RE: Connecting with David Godkin

Hi [REDACTED]

No problem. 1 pm tomorrow it is. We can use my dial-in:

Toll-Free Access Number: 877-594-8353
Participant Pass Code: 49968262

Best,
Jim

From: [REDACTED]@MassMail.State.MA.US1

From: [REDACTED] <[REDACTED]@MassMail.State.MA.US>

Sent: Wednesday, March 28, 2018 10:36 AM

To: James Kruzer <kruzer@birnbaumgodkin.com>; David Godkin <godkin@birnbaumgodkin.com>; [REDACTED]

[REDACTED] <[\[REDACTED\]@state.ma.us](mailto:[REDACTED]@state.ma.us)>

Cc: [REDACTED] <[\[REDACTED\]@state.ma.us](mailto:[REDACTED]@state.ma.us)>

Subject: RE: Connecting with David Godkin

Hi James-

Sorry for my delay on getting back to you – we've been tied up. Can we grab time on 3/29 (Thursday) at 1pm?

Thanks!

From: James Kruzer [<mailto:kruzer@birnbaumgodkin.com>]

Sent: Monday, March 26, 2018 3:00 PM

To: David Godkin <godkin@birnbaumgodkin.com>; [REDACTED] <[\[REDACTED\]@MassMail.State.MA.US](mailto:[REDACTED]@MassMail.State.MA.US)>; [REDACTED]

[REDACTED] <[\[REDACTED\]@MassMail.State.MA.US](mailto:[REDACTED]@MassMail.State.MA.US)>

[REDACTED] <[\[REDACTED\]@MassMail.State.MA.US](mailto:[REDACTED]@MassMail.State.MA.US)>

Subject: RE: Connecting with David Godkin

Hello [REDACTED]

Following up on David's email, please let me know if there is a convenient time to discuss this matter during any of these windows:

Tuesday, March 27: 10:00 am – 1:00 pm; 2:00 pm – 4:00 pm

Wednesday, March 28: 10:00 am – 3:00 pm; 4:00 pm – 5:00 pm

Thursday, March 29: 10:00 am – 5:00 pm

I look forward to speaking with you.

Best,

Jim

From: David Godkin

Sent: Monday, March 26, 2018 2:40 PM

To: [REDACTED] <[\[REDACTED\]@MassMail.State.MA.US](mailto:[REDACTED]@MassMail.State.MA.US)>; [REDACTED] <[\[REDACTED\]@state.ma.us](mailto:[REDACTED]@state.ma.us)>

Cc: [REDACTED] <[\[REDACTED\]@state.ma.us](mailto:[REDACTED]@state.ma.us)>; James Kruzer <kruzer@birnbaumgodkin.com>

Subject: RE: Connecting with David Godkin

Thanks [REDACTED] and nice to meet you as well,

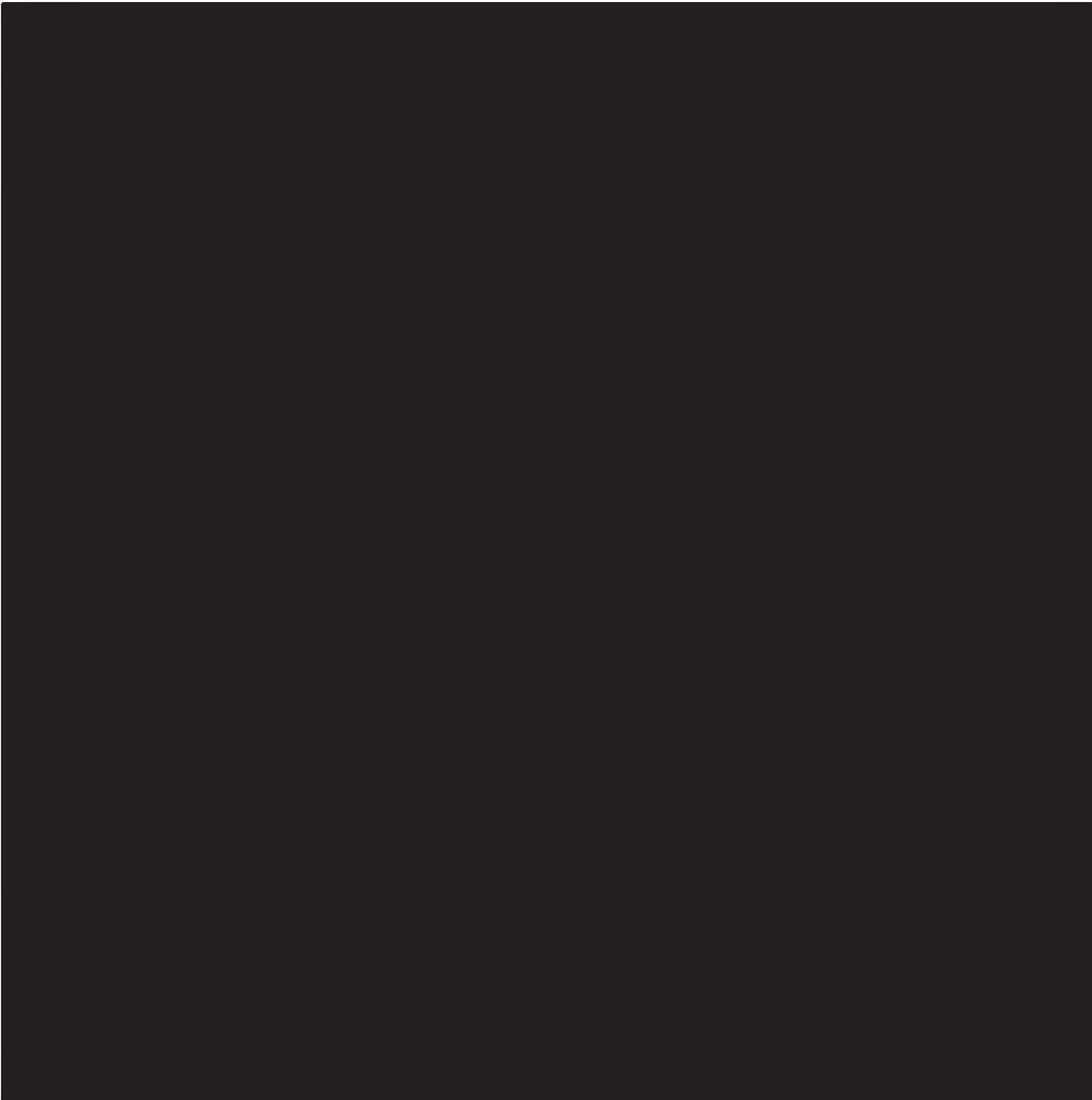
Unfortunately I will be in an arbitration starting tomorrow for the next few days, but I have copied my colleague Jim Kruzer who is working with me on the Facebook litigation. Jim will touch base with you, and hopefully I can speak with you when I free up.

My firm has obtained extensive discovery of communications between Zuckerberg and numerous other Facebook executives and employees regarding Facebook's treatment of user data and third party developers from 2007 to 2015. I believe the information we have uncovered is highly relevant to the Cambridge Analytica investigation and demonstrates clearly that Facebook violated the privacy of MA citizens and its prior settlement with the FTC.

I have attempted to summarize the evidence below. This summary does not do the wealth of evidence we have obtained justice, which is why I'm hoping there is an appropriate mechanism for your staff to review this information to ensure your investigation and the public debate in Massachusetts around this issue is fully informed.

Regards,

David



As you can see, there is a lot here, and it would take months or even years for your office to obtain discovery of this information from Facebook, if at all. We hope to identify an appropriate mechanism for your office to evaluate the evidence to come to its own conclusions regarding its impact on Facebook's culpability in the Cambridge Analytica matter

From: [REDACTED] <[\[REDACTED\]@MassMail.State.MA.US](mailto:[REDACTED]@MassMail.State.MA.US)>
Sent: Monday, March 26, 2018 11:04 AM
To: [REDACTED] <[\[REDACTED\]@state.ma.us](mailto:[REDACTED]@state.ma.us)>; David Godkin <godkin@birnbaumgodkin.com>
Cc: [REDACTED] <[\[REDACTED\]@state.ma.us](mailto:[REDACTED]@state.ma.us)>
Subject: Re: Connecting with David Godkin

Thanks, [REDACTED] TJ and David- nice to meet you. Is there a good time tomorrow that [REDACTED] and I can touch base on this?

Thanks-

[REDACTED]

From: [REDACTED]
Sent: Monday, March 26, 2018 10:30 AM
To: David S. Godkin
Cc: [REDACTED]
Subject: Connecting with David Godkin

David, thanks for reaching out. I am copying in our team, [REDACTED] Both are [REDACTED] in our Consumer Protection Division. [REDACTED]
Yours,

[REDACTED]

[REDACTED]

From: Thomas Scaramellino [<mailto:thomas.scaramellino@gmail.com>]
Sent: Sunday, March 25, 2018 2:09 PM
To: [REDACTED] <[\[REDACTED\]@MassMail.State.MA.US](mailto:[REDACTED]@MassMail.State.MA.US)>; David S. Godkin <godkin@birnbaumgodkin.com>
Subject: Re: Do you want to give a call?

[REDACTED]

Many thanks for the call just now. Please meet David Godkin, lead counsel in the litigation I mentioned. David's office is right on Summer Street in Fort Point.

[REDACTED]

All best,

TJ

BG001330

**[Redacted Version of
Document Proposed to
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EXHIBIT 25

From: David Godkin
Sent time: 04/30/2018 03:24:31 PM
To: [REDACTED] [REDACTED]@ico.org.uk>
Cc: James Kruzer
Subject: RE: Extensive evidence regarding Facebook's treatment of friend data and user privacy

[REDACTED]

A case management conference was held this past Friday. We are filing an opposition to the defendants' Anti-SLAPP motions on 5/17 that will contain approximately 2,000 pages of evidence supporting our position that the conduct we allege in our complaint, namely that Facebook's entire business today, and virtually all its privacy scandals these past few years, are the fruits of a bait and switch scheme designed by Zuckerberg in 2012 to keep Facebook's business from collapsing by weaponizing user data in a manner that defrauded developers and users. This evidence goes to the very heart of the Cambridge Analytica scandal, and much more. These motions will be heard on Monday, July 2, at 9 a.m.

Facebook and the individual defendants will move to seal the evidence we submit no later than 5/25. If you would like to convince the Court that this evidence should be available to the public, you should file a motion seeking permission to participate as amicus curiae.

Your motion, along with your proposed amicus brief, must be filed and served by June 6 so that it can be heard by the Court on July 2 at the same hearing at which the Court will consider numerous motions in the case. If the Court denies the motion to seal, the evidence would be transferred immediately to the public case file. There is a strong public interest argument here. (In my view, the public interest argument doesn't get much stronger when you're talking about conduct that defrauds 1/3 of the world's population and tens of millions of businesses.)

Please let me know asap whether you intend to file a motion seeking leave to file an amicus brief. Our team could prepare a draft motion or template if that would be helpful. I look forward to hearing from you.

David Godkin

From: [REDACTED]@ico.org.uk>
Sent: Wednesday, March 28, 2018 7:35 AM
To: David Godkin <godkin@birnbaumgodkin.com>
Subject: RE: Extensive evidence regarding Facebook's treatment of friend data and user privacy

Hi David

Jim was not copied into your email. We might wait until your hearing is over or happy to further coordinate with him when we have his details.

Many thanks

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

From: David Godkin [<mailto:godkin@birnbaumgodkin.com>]
Sent: 28 March 2018 12:30
To: [REDACTED]
Cc: [REDACTED]
Subject: Re: Extensive evidence regarding Facebook's treatment of friend data and user privacy

Thank you [REDACTED] I am in an arbitration hearing for the next several days but am copying my colleague Jim Kruzer who I believe will be in the office and can coordinate.

Regards,
David

Sent from my iPhone

On Mar 28, 2018, at 7:07 AM, [REDACTED] [REDACTED] [REDACTED]@ico.org.uk> wrote:

Dear David

Thank you for your email and my apologies for the late reply to it. Your correspondence has now been passed on to the investigation team directly dealing with the Cambridge Analytica/FB file. They will be in touch shortly

Best regards,

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

From: David Godkin [<mailto:godkin@birnbaumgodkin.com>]
Sent: 22 March 2018 16:24
To: [REDACTED]

Subject: Extensive evidence regarding Facebook's treatment of friend data and user privacy

Commissioner Denham and Staff:

My name is David Godkin. My firm has obtained extensive discovery of communications between Zuckerberg and numerous other Facebook executives and employees regarding Facebook's treatment of user data and third party developers from 2007 to 2015. I believe the information we have uncovered is highly relevant to the Cambridge Analytica investigation and demonstrates clearly that Facebook violated the privacy of UK citizens and its prior settlement with the FTC.

I have attempted to summarize the evidence below. This summary does not do the wealth of evidence we have obtained justice, which is why I'm hoping we can speak with your office to determine if there is an appropriate mechanism for your team to evaluate the evidence yourselves.


I look forward to hearing from you.

Regards,

David

--





As you can see, there is a lot here, and it would take months or even years for ICO to obtain discovery of this information from Facebook. We hope to identify an appropriate mechanism for your team to access it and determine its relevance to your current efforts.

BG001357

Sent from my iPhone

**[Redacted Version of
Document Proposed to
be Filed under Seal]**

EXHIBIT 26

From: David Godkin
Sent time: 04/30/2018 03:28:10 PM
To: [REDACTED]@ftc.gov>
Cc: thomas.scaramellino@gmail.com; James Kruzer
Subject: RE: Facebook Litigation

[REDACTED]

A case management conference was held this past Friday. We are filing an opposition to the defendants' Anti-SLAPP motions on 5/17 that will contain approximately 2,000 pages of evidence supporting our position that the conduct we allege in our complaint, namely that Facebook's entire business today, and virtually all its privacy scandals these past few years, are the fruits of a bait and switch scheme designed by Zuckerberg in 2012 to keep Facebook's business from collapsing by weaponizing user data in a manner that defrauded developers and users. This evidence goes to the very heart of the Cambridge Analytica scandal, and much more. These motions will be heard on Monday, July 2, at 9 a.m.

Facebook and the individual defendants will move to seal the evidence we submit no later than 5/25. If you would like to convince the Court that this evidence should be available to the public, you should file a motion seeking permission to participate as amicus curiae.

Your motion, along with your proposed amicus brief, must be filed and served by June 6 so that it can be heard by the Court on July 2 at the same hearing at which the Court will consider numerous motions in the case. If the Court denies the motion to seal, the evidence would be transferred immediately to the public case file. There is a strong public interest argument here. (In my view, the public interest argument doesn't get much stronger when you're talking about conduct that defrauds 1/3 of the world's population and tens of millions of businesses.)

Please let me know asap whether you intend to file a motion seeking leave to file an amicus brief. Our team could prepare a draft motion or template if that would be helpful. I look forward to hearing from you.

David Godkin

From: David Godkin
Sent: Wednesday, March 21, 2018 7:14 PM
To: [REDACTED]@ftc.gov>
Cc: thomas.scaramellino@gmail.com
Subject: Facebook Litigation

Hi [REDACTED]

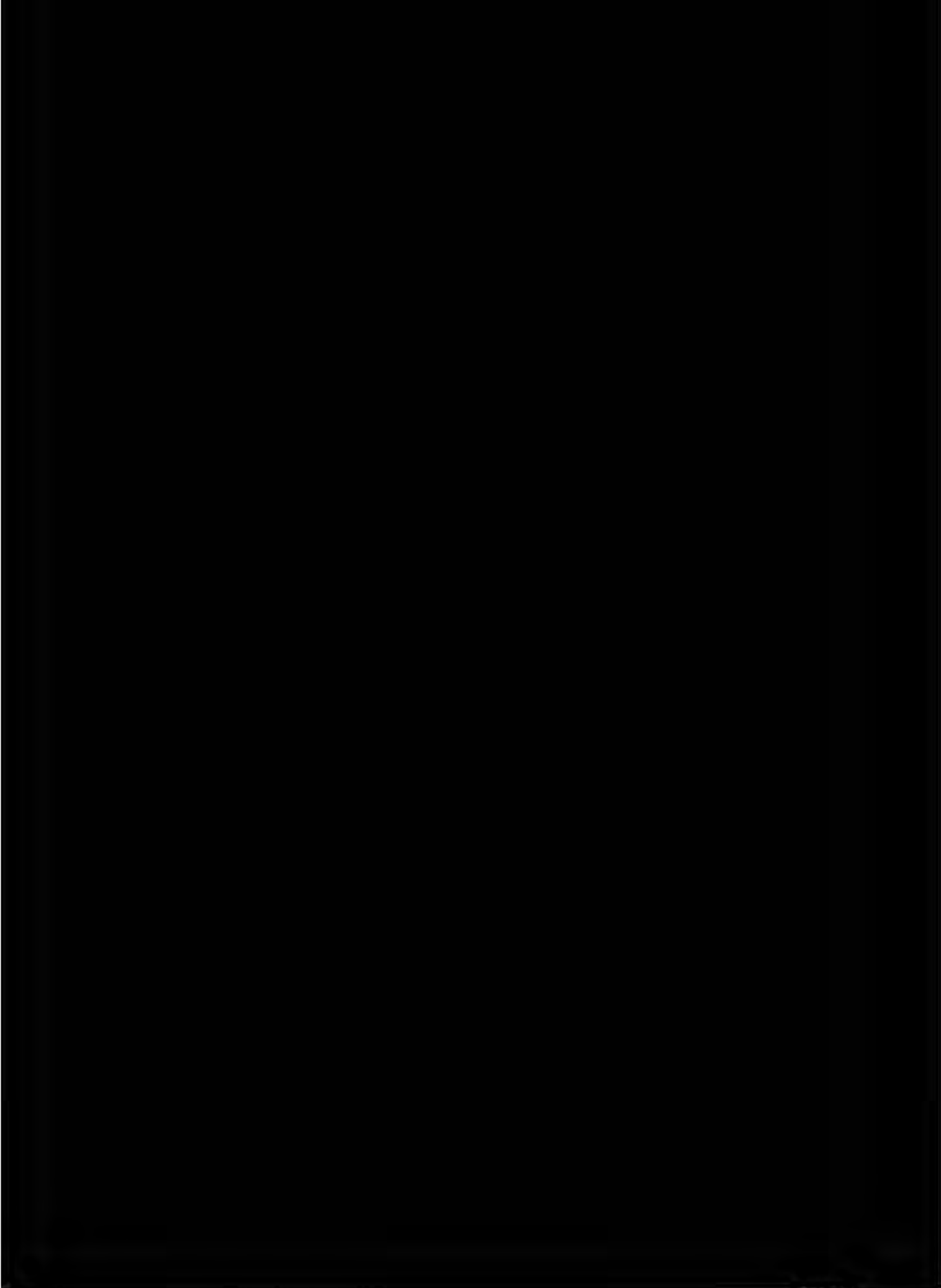
My name is David Godkin. My firm has obtained extensive discovery of communications between Zuckerberg and numerous other Facebook executives and employees regarding Facebook's treatment of user data and third party developers from 2007 to 2015. I believe the information we have uncovered is highly relevant to the Cambridge Analytica investigation and demonstrates clearly that Facebook violated the prior FTC Order. I have attempted to summarize the evidence below. This summary does not do the wealth of evidence we have obtained justice, which is why I'm hoping we can speak briefly on a call to determine if there is an appropriate mechanism for your team to evaluate the evidence yourselves.

I look forward to hearing from you.

Regards,

David

[REDACTED]



BG001825

EXHIBIT 27

From: David Godkin
Sent time: 04/30/2018 03:29:59 PM
To: [REDACTED]@doj.ca.gov>; [REDACTED]@doj.ca.gov>
Cc: Thomas Scaramellino <thomas.scaramellino@gmail.com>; James Kruzer
Subject: RE: Facebook Litigation

[REDACTED]

Following up: A case management conference was held this past Friday. We are filing an opposition to the defendants' Anti-SLAPP motions on 5/17 that will contain approximately 2,000 pages of evidence supporting our position that the conduct we allege in our complaint, namely that Facebook's entire business today, and virtually all its privacy scandals these past few years, are the fruits of a bait and switch scheme designed by Zuckerberg in 2012 to keep Facebook's business from collapsing by weaponizing user data in a manner that defrauded developers and users. This evidence goes to the very heart of the Cambridge Analytica scandal, and much more. These motions will be heard on Monday, July 2, at 9 a.m.

Facebook and the individual defendants will move to seal the evidence we submit no later than 5/25. If you would like to convince the Court that this evidence should be available to the public, you should file a motion seeking permission to participate as amicus curiae. It might make sense for a number of the state AG's to join together for this purpose.

Your motion, along with your proposed amicus brief, must be filed and served by June 6 so that it can be heard by the Court on July 2 at the same hearing at which the Court will consider numerous motions in the case. If the Court denies the motion to seal, the evidence would be transferred immediately to the public case file. There is a strong public interest argument here. (In my view, the public interest argument doesn't get much stronger when you're talking about conduct that defrauds 1/3 of the world's population and tens of millions of businesses.)

Please let me know asap whether you intend to file a motion seeking leave to file an amicus brief. Our team could prepare a draft motion or template if that would be helpful. I look forward to hearing from you.

David Godkin

From: [REDACTED]@doj.ca.gov>
Sent: Thursday, April 05, 2018 7:18 PM
To: [REDACTED]@doj.ca.gov>; David Godkin <godkin@birnbaumgodkin.com>
Cc: Thomas Scaramellino <thomas.scaramellino@gmail.com>; James Kruzer <kruzer@birnbaumgodkin.com>
Subject: RE: Facebook Litigation

Thank you, all. Here is my full contact info:

[REDACTED]

From: [REDACTED]
Sent: Thursday, April 05, 2018 4:16 PM
To: David Godkin <godkin@birnbaumgodkin.com>; [REDACTED] <[\[REDACTED\]@doj.ca.gov](mailto:[REDACTED]@doj.ca.gov)>
Cc: Thomas Scaramellino <thomas.scaramellino@gmail.com>; James Kruzer <kruzer@birnbaumgodkin.com>
Subject: RE: Facebook Litigation

Thank you David. My contact information below. Feel free to reach out if there are any new developments. I'm sure that we will be in touch soon.



From: David Godkin [<mailto:godkin@birnbaumgodkin.com>]
Sent: Thursday, April 05, 2018 4:06 PM
To: [REDACTED] <[\[REDACTED\]@doj.ca.gov](mailto:[REDACTED]@doj.ca.gov)>; [REDACTED] <[\[REDACTED\]@doj.ca.gov](mailto:[REDACTED]@doj.ca.gov)>
Cc: Thomas Scaramellino <thomas.scaramellino@gmail.com>; James Kruzer <kruzer@birnbaumgodkin.com>
Subject: RE: Facebook Litigation



Thanks for the call. I have attached the Protective Order, and the Word document request that we discussed.

Tom's email is above and his phone is (917) 373-3557. You have my email; my office phone is (617) 307-6110 and cell is (617) 501-4159. My firm's website is www.birnbaumgodkin.com with further information.

Please do not hesitate to get in touch with any questions.

Regards,

David

From: [REDACTED] <[\[REDACTED\]@doj.ca.gov](mailto:[REDACTED]@doj.ca.gov)>
Sent: Wednesday, April 04, 2018 7:20 PM
To: David Godkin <godkin@birnbaumgodkin.com>
Cc: Thomas Scaramellino <thomas.scaramellino@gmail.com>; [REDACTED] <[\[REDACTED\]@doj.ca.gov](mailto:[REDACTED]@doj.ca.gov)>; James Kruzer <kruzer@birnbaumgodkin.com>
Subject: RE: Facebook Litigation

David –

Would 3 pm PT be feasible?

Thank you,
[REDACTED]

From: David Godkin [<mailto:godkin@birnbaumgodkin.com>]
Sent: Wednesday, April 04, 2018 3:35 PM
To: [REDACTED] <[\[REDACTED\]@doj.ca.gov](mailto:[REDACTED]@doj.ca.gov)>; [REDACTED] <[\[REDACTED\]@doj.ca.gov](mailto:[REDACTED]@doj.ca.gov)>

Cc: Thomas Scaramellino <thomas.scaramellino@gmail.com>; [REDACTED] <[\[REDACTED\]@doj.ca.gov](mailto:[REDACTED]@doj.ca.gov)>; [REDACTED]

<[\[REDACTED\]@doj.ca.gov](mailto:[REDACTED]@doj.ca.gov)>; James Kruzer <kruzer@birnbaumgodkin.com>

Subject: Re: Facebook Litigation

[REDACTED]

I am out of town on Friday but if you are available tomorrow, I can speak at 11 PT or later. If tomorrow doesn't work, my colleague Jim Kruzer can be available on Friday between 9 and noon PT. Please let me know if any of these options work for you.

Regards,

David

From: [REDACTED] <[\[REDACTED\]@doj.ca.gov](mailto:[REDACTED]@doj.ca.gov)>

Date: Wednesday, April 4, 2018 at 6:09 PM

To: [REDACTED] <[\[REDACTED\]@doj.ca.gov](mailto:[REDACTED]@doj.ca.gov)>, David Godkin <godkin@birnbaumgodkin.com>

Cc: Thomas Scaramellino <thomas.scaramellino@gmail.com>, [REDACTED] <[\[REDACTED\]@doj.ca.gov](mailto:[REDACTED]@doj.ca.gov)>, [REDACTED] <[\[REDACTED\]@doj.ca.gov](mailto:[REDACTED]@doj.ca.gov)>

Subject: RE: Facebook Litigation

Hello David,

Thank you for reaching out – would you have some time on Friday to speak about this matter?

[REDACTED]

From: [REDACTED]

Sent: Tuesday, April 03, 2018 12:13 AM

To: David Godkin <godkin@birnbaumgodkin.com>

Cc: Thomas Scaramellino <thomas.scaramellino@gmail.com>; [REDACTED] <[\[REDACTED\]@doj.ca.gov](mailto:[REDACTED]@doj.ca.gov)>; [REDACTED] <[\[REDACTED\]@doj.ca.gov](mailto:[REDACTED]@doj.ca.gov)>

Subject: RE: Facebook Litigation

David,

Thank you. I am copying [REDACTED] who is handling this matter.

[REDACTED]

From: [REDACTED]

Sent: Friday, March 30, 2018 2:22 PM

Sent: Friday, March 30, 2018 2:21 PM

To: David Godkin <godkin@birnbaumgodkin.com>

Cc: Thomas Scaramellino <thomas.scaramellino@gmail.com>; [REDACTED] <[REDACTED]@doj.ca.gov>

Subject: RE: Facebook Litigation

Thank you, David.

[REDACTED]

From: David Godkin [<mailto:godkin@birnbaumgodkin.com>]

Sent: Friday, March 30, 2018 1:00 PM

To: [REDACTED] <[REDACTED]@doj.ca.gov>

Cc: Thomas Scaramellino <thomas.scaramellino@gmail.com>

Subject: Facebook Litigation

Ms. [REDACTED]

I understand that you have spoken with Tom. I have attached the operative complaint against Facebook in San Mateo Superior Court, and a summary. I recommend starting with the summary.

You or [REDACTED] should feel free to contact me or Jim Kruzer.

Regards,

David Godkin

Birnbaum & Godkin, LLP

(617) 307-6110

CONFIDENTIALITY NOTICE: This communication with its contents may contain confidential and/or legally privileged information. It is solely for the use of the intended recipient(s). Unauthorized interception, review, use or disclosure is prohibited and may violate applicable laws including the Electronic Communications Privacy Act. If you are not the intended recipient, please contact the sender and destroy all copies of the communication.

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CONFIDENTIALITY NOTICE: This communication with its contents may contain confidential and/or legally privileged information. It is solely for the use of the intended recipient(s). Unauthorized interception, review, use or disclosure is prohibited and may violate applicable laws including the Electronic Communications Privacy Act. If you are not the intended recipient, please contact the sender and destroy all copies of the communication.

BG001860

EXHIBIT 28

From: James Kruzer
Sent time: 05/17/2018 06:28:41 PM
To: [REDACTED]@observer.co.uk; [REDACTED]@theguardian.com
Cc: David Godkin; Thomas Scaramellino <thomas.scaramellino@gmail.com>; Ted Kramer <ted@six4three.com>
Subject: Six4Three v. Facebook Application and Amicus Brief
Attachments: 01 Opp to Anti-SLAPP Motions_180510 - public.pdf 01a DSG Decl. ISO opp to Anti-slapp motions w all exs. - Public.pdf Application for Leave to File Amicus Brief [template].docx

Dear [REDACTED]

Nice speaking with you both today. Please find attached the redacted brief and redacted supporting declaration we filed today in Opposition to Defendants' Anti-SLAPP Motion. The unredacted versions of these documents include approximately 3,000 pages of evidence we are seeking to unseal at the July 2 hearing.

Please also find attached a draft Application for Leave to File Amicus Brief and the Amicus Brief itself as Exhibit A to the Application. This is a template that The Guardian should feel free to modify as it sees fit and is intended solely to reduce the amount of time and money you need to spend in researching California state law and preparing the brief from scratch.

The brief makes clear that The Guardian takes no position on the claims and defenses in the case and supports neither Party. Rather, your organization's sole purpose in filing the brief is to examine the evidence in light of the strong public interest in getting to the bottom of Facebook's management of user data, particularly regarding third party access from 2012 to 2015.

Please let us know when your counsel might be available for a call to discuss the brief and filing process. A few items are worth mentioning at the outset:

- The brief must be filed with the clerk no later than June 6 to be heard on July 2. Many clerks in California trial courts are not familiar with amicus filing procedures, though filing an amicus brief is clearly permitted at the Court's discretion.
- We recommend filing with the clerk well in advance of the June 6 deadline in case the clerk needs to be educated on this procedure. We are happy to assist in this.
- We also recommend filing a courtesy copy directly with the Judge to ensure he is aware of your intent to file the brief.
- The hearing is on July 2 at 9:00 am in Department 23 of the San Mateo Superior Court at 400 County Center, Redwood City, CA. We recommend having reporters at the hearing as the substantive motions will be argued at that time.

Please contact me any time with any questions. I look forward to hearing from you.

Regards,

Jim Kruzer

BG007476

Stuart G. Gross (#251019)
Benjamin H. Klein (#313922)
GROSS & KLEIN LLP
The Embarcadero, Pier 9, Suite 100
San Francisco, CA 94111
(415) 671-4628
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SIX4THREE, LLC, a Delaware
limited liability company

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN MATEO

SIX4THREE, LLC, a Delaware limited
liability company,

Plaintiff,

v.

FACEBOOK, INC., a Delaware
corporation;
MARK ZUCKERBERG, an individual;
CHRISTOPHER COX, an individual;
JAVIER OLIVAN, an individual;
SAMUEL LESSIN, an individual;
MICHAEL VERNAL, an individual;
ILYA SUKHAR, an individual; and
DOES 1 through 50, inclusive,

Defendants.

) Case No. CIV 533328
)
)

) **Assigned For All Purposes To Hon. V.**
) **Raymond Swope, Dept. 23**
)

) **MEMORANDUM OF POINTS AND**
) **AUTHORITIES IN OPPOSITION TO**
) **DEFENDANTS' SPECIAL MOTIONS**
) **TO STRIKE (ANTI-SLAPP)**
)

HEARING DATE: July 2, 2018

HEARING TIME: 9:00 a.m.

DEPARTMENT: 23

JUDGE: Hon. V. Raymond Swope

FILING DATE: April 10, 2015

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25
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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES
I. ARGUMENT
 A. The Commercial Speech Exemption Applies
 B. Plaintiff Is Likely to Prevail On Its Section 17200 Claim
 C. Plaintiff Is Likely to Prevail On Its Remaining Claims
II. CONCLUSION

TABLE OF AUTHORITIES

CASES

Page

<i>Daugherty v. American Honda Motor Co., Inc.</i> , (2006) 144 Cal.App.4th 824	
<i>In re Tobacco II Cases</i> , (2009) 46 Cal.4th 298	
<i>Scripps Clinic v. Superior Court</i> , (2003) 108 Cal.App.4th 917, 940	
<i>Smith v. State Farm Mutual Automobile Ins. Co.</i> , (2001) 93 Cal.App.4th 700	

STATUTES

Bus. & Prof. Code, § 16727	
Bus. & Prof. Code, § 17200	
Cal. Code Civ. Proc. § 425.17	

OTHER AUTHORITIES

California Civil Jury Instructions (CACI) (2017) No. 303	
California Civil Jury Instructions (CACI) (2017) No. 1900	
California Civil Jury Instructions (CACI) (2017) No. 1901	
California Civil Jury Instructions (CACI) (2017) No. 1903	
California Civil Jury Instructions (CACI) (2017) No. 2201	
California Civil Jury Instructions (CACI) (2017) No. 3421	

1 **I. ARGUMENT**

2 **A. The Commercial Speech Exemption Applies**

3 Plaintiff incorporates the arguments raised in its oppositions to Facebook’s Anti-SLAPP
4 Motion, including the applicability of the commercial speech exemption of Cal. Code Civ. Proc.
5 § 425.17(c) and the unprecedented untimeliness in asserting the Anti-SLAPP argument.¹

6 **B. Plaintiff Is Likely to Prevail on Its Section 17200 Claim**

7 Plaintiff has demonstrated that Zuckerberg and Facebook baited tens of thousands of
8 software companies with specific affirmative representations and partial disclosures of fact from
9 2007 to 2014 to induce them to invest capital and labor in building businesses on Facebook
10 Platform, which was critical to Facebook’s rapid growth from 20 million users in 2007 to over
11 two billion users today, including representations that Facebook Platform would: (1) operate as an
12 open and neutral platform to ensure a level competitive playing field for participating companies
13 (“developers”), both with respect to one another and Facebook; (2) maintain controls and
14 procedures that would ensure user privacy and enable developers who relied upon Facebook
15 Platform to do the same; (3) enforce such policies around user data and privacy in a neutral
16 manner and without regard for the amount of advertising a developer purchased from Facebook;
17 (4) provide an opportunity for companies to build stable businesses; (5) provide equal and neutral
18 access to Facebook’s Graph APIs, including the APIs relied upon by Plaintiff (User ID API, Full
19 Friends List API, Friends Permissions APIs and Newsfeed APIs), while at all times respecting the
20 privacy of user data and the right of a user to own and control her own data; and (6) enable
21 companies to grow their businesses by leveraging Facebook’s graph for organic user growth.²

22 ¹ See Plaintiff’s Opposition to Facebook’s Special Motion to Strike (Anti-SLAPP) filed on
23 December 12, 2017, Plaintiff’s Supplemental Opposition to Facebook’s Special Motion to Strike
24 (Prong 1) filed on January 24, 2018, Plaintiff’s Reply to Defendant’s Supplemental Memorandum
25 in Support of Anti-SLAPP Motion (Prong 1) filed on March 7, 2018, and Plaintiff’s Supplemental
26 Memorandum of Points and Authorities in Opposition to Special Motions to Strike (*Newport Harbor*) filed on May 3, 2018. Declaration of David S. Godkin In Support of Plaintiff’s Request for Judicial Notice (“Jud. Not. Dec.”), ¶¶ 214-217, Exs. 213-216.

27 ² Declaration of David S. Godkin In Opposition to Anti-SLAPP Motions (“Dec.”), ¶ 2, Ex. 1, at
28 82:7-85:20; ¶ 3, Ex. 2, at 45:16-56:08, 75:21-79:20, 167:9-168:20; ¶ 4, Ex. 3, at 32:2-22, 73:7-
74:20, 78:25-81:25; ¶ 5, Ex. 4, at 60:9-61:25; ¶¶ 11-14, Exs. 10-13; ¶ 181, Ex. 181. Jud. Not. Dec.,
¶¶ 3-6, 9, 10, 13, 14, 54-61, 67, 68, 74, 75 (Exs. 2-5, 8, 9, 12, 13, 53-60, 66, 67, 73, 74) (“We’re

1 These affirmative representations and partial disclosures were widely known in the consumer
2 software industry, and because of these statements, many companies decided to build their
3 businesses on Facebook Platform. Dec., ¶ 3, Ex. 2, at 90:6-92:14; ¶ 4, Ex. 3, at 21:1-22, 53:22-
4 54:17; ¶ 7, Ex. 6, 360:2-25; ¶ 76, Ex. 75. Facebook made these representations and partial
5 disclosures with the specific intent to induce companies to rely on Facebook Platform, which
6 greatly benefited Facebook.³ Plaintiff relied on these representations and partial disclosures when
7 deciding to build its business on Facebook Platform. Dec., ¶ 9, Ex. 8, at 115-117; ¶ 10, Ex. 9, at
8 252. At no time did Facebook manage its Platform as a level competitive playing field that
9 respected user privacy; instead, unbeknownst to Plaintiff, Facebook and its senior executives
10 willfully, maliciously and arbitrarily violated these representations and failed to disclose facts that
11 materially undermined them in order to leverage its Platform as a weapon to unjustly enrich
12 Facebook and its senior executives by willfully violating the privacy of Facebook users and
13 architecting a scheme to blame developers for Facebook's own repeated privacy violations.⁴

14 Facebook architected its Platform in a manner designed to violate user privacy as early as
15 2009, which entailed: (1) separating the privacy settings for data a user shared with friends in
16 apps the user downloaded ("user data") with the privacy settings ("Apps Others Use" settings)
17 for data the user shared with friends in apps the friends downloaded ("friend data") (Jud. Not.
18 Dec., ¶ 32, Ex. 31, Federal Trade Commission Complaint, at 4-7); (2) hiding the Apps Others
19 Use settings to ensure most Facebook users were not aware that these settings were distinct from
20 the main privacy settings (*Id.*, at 4-9); (3) making the default setting for sharing data with Apps

21 very optimistic that if you were choosing to develop a service, you would choose to do with us.
22 We really consider ourselves a partnership company. And that means that we want to take social
23 companies and make them big, and big companies and make them social, because we think
24 bringing what Facebook provides, which is your friends, makes every service better" (Sheryl
Sandberg, July 26, 2012 Quarterly Earnings Call, Ex. 57)).

25 ³ Dec., ¶ 2, Ex. 1, at 125:7-130:14, 268:6-272:4; ¶ 3, Ex. 2, at 188:23-189:15; ¶ 4, Ex. 3, at 21:23-
26 22:2, 28:8-22, 40:14-41:14, 59:2-61:4; ¶¶ 15-17, Exs. 14-16. Jud. Not. Dec., ¶¶ 54-61 (Exs. 53-
60).

27 ⁴ Dec., ¶ 3, Ex. 2, at 99:11-120:4, 125:19-131:20; ¶ 18, Ex. 17; ¶ 139, Ex. 138; ¶ 172, Ex. 172; ¶¶
28 177-180, Exs. 177-180; ¶ 188, Ex. 188; ¶ 197, Ex. 197.

1 Others Use set to “on” so Facebook could funnel more data to developers under the guise of user
2 consent (*Id.*, at 7-11); and (4) deliberately failing to pass privacy settings for data transmitted to
3 developers via Facebook’s APIs, signaling to developers that all friend data was public and could
4 be treated as such. Dec., ¶ 117, Ex. 116; ¶¶ 155-157, Exs. 155-157; ¶ 174, Ex. 174; ¶ 191, Ex.
5 191; ¶ 192, Ex. 192; ¶¶ 194-196, Exs. 194-196. Jud. Not. Dec., ¶¶ 29-36, 177 (Exs. 28-35, 176).
6 Facebook did not comply with the FTC Order to eliminate this artificial distinction between
7 “user data” and “friend data” that allowed Facebook to funnel friend data *en masse* to developers
8 without concern for privacy restrictions. To address the FTC Order, all Facebook had to do was:
9 (1) combine the privacy settings for apps downloaded by a user and apps downloaded by the
10 user’s friends in the main privacy page (instead of hiding the Apps Others Use page); (2) change
11 the default data-sharing setting from “on” to “off”; and (3) include the privacy setting of a piece
12 of data when sending that data to developers through its APIs. Instead, Facebook shirked the
13 FTC order by expanding upon its intentionally flawed privacy design more urgently than ever to
14 ensure Facebook had a valuable trading tool that would convince developers to make entirely
15 unrelated purchases in Facebook’s new mobile advertising product, which saved Facebook’s
16 business from collapsing in late 2012 and early 2013. In short, Zuckerberg weaponized the data
17 of one-third of the planet’s population in order to cover up his failure to transition Facebook’s
18 business from desktop computers to mobile ads before the market became aware that Facebook’s
19 financial projections in its 2012 IPO filings were false. Jud. Not. Dec., ¶¶ 37, 82, 96 (Exs. 36, 81,
20 95). The flawed design also enabled Facebook to state in 2014 that a user could not consent to
21 share data with friends in any app other than Facebook – a remarkable claim since Facebook held
22 the exact opposite position for seven years – but one that served as a convenient privacy-focused
23 excuse to eliminate competitors to its new products in video, photo, messaging, contact
24 management, e-commerce, payments, and now dating.⁵

25 Zuckerberg’s scheme made it impossible for Plaintiff’s business and thousands of other
26 businesses to succeed on Facebook Platform and directly resulted in the widely reported scandal
27 in which a developer, Cambridge Analytica, used Facebook data to influence the 2016

28 ⁵ Dec., ¶ 120, Ex. 119; ¶ 133, Ex. 132; ¶ 160, Ex. 160. Jud. Not. Dec., ¶ 53, 201 (Exs. 52, 200).

1 Presidential election allegedly on behalf of the Russian government.⁶ The evidence uncovered by
2 Plaintiff demonstrates that the Cambridge Analytica scandal was not the result of mere
3 negligence on Facebook's part, but was rather the direct consequence of the malicious and
4 fraudulent scheme Zuckerberg designed in 2012 to cover up his failure to anticipate the world's
5 transition to smartphones. This scheme caused so much internal chaos at Facebook [REDACTED]

6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED] Dec., ¶¶ 153, 154,
10 Exs. 153, 154. [REDACTED]

11 [REDACTED] constitutes a far greater abuse than the Cambridge Analytica matter being investigated
12 by federal and state authorities in which 87 million consumers had their data transferred to
13 Russian entities. This conduct implicates the rights of one-third of the world's population, and
14 yet remains shrouded from public view. Jud. Not. Dec., ¶¶ 90, 111 (Exs. 89, 110).

15 At least by 2012, Zuckerberg personally oversaw a practice to weaponize Platform APIs,
16 including a wide range of user and friend data, by inducing companies to rely on this data and
17 then threatening to remove access unless these companies made exorbitant purchases in
18 Facebook's nascent mobile advertising product, known internally as "Neko" ads and publicly as
19 "Mobile App Install" ads. Jud. Not. Dec., ¶¶ 7, 8, 77, 78 (Exs. 6, 7, 76, 77). Zuckerberg
20 blacklisted any companies that refused to buy these Neko ads in exchange for continued access
21 to data that Facebook claimed for years was publicly available at no charge. This blacklisting
22 practice also applied to companies that Zuckerberg in his sole discretion considered competitive
23 with current or future Facebook products, even products Facebook had not yet built, and
24 notwithstanding that most of these developers operated entirely within Facebook's rules.⁷

25 ⁶ Jud. Not. Dec., ¶¶ 24-28, 108, 110, 113, 114, 116, 134, 141, 143, 155, 158, 163, 164, 167-170,
26 175, 176, 181-186, 188, 190, 192, 194-198, 200, 201 (Exs. 23-27, 107, 109, 112, 113, 115, 133,
27 140, 142, 154, 157, 162, 163, 166-169, 174, 175, 180-185, 187, 189, 191, 193-197, 199, 200).

28 ⁷ Dec., ¶ 2, Ex. 1, at 177:14-181:20, 195:18-199:7, 231:25-233:18, 257:20-258:14; ¶ 5, Ex. 4, at
79:14-84:17, 139:13-145:13, 163:1-167:19; ¶¶ 19-26, Exs. 18-25; ¶¶ 42-45 Exs. 41-44; ¶ 165, Ex.

1 Zuckerberg's decision to weaponize a platform economy that Facebook represented for
2 years as open, fair and neutral stemmed from a simple fact that by 2012 had devastating
3 consequences for Facebook: people began accessing the Internet primarily from their phones, but
4 Facebook had built its advertising business for desktop computers, which caused Facebook's
5 revenues and stock price to plummet. Facebook lost over \$200 million in the second and third
6 quarters of 2012 because it had no mobile advertising business.⁸ By mid-2012, Facebook's most
7 senior executives⁹ explored ways to leverage the fact that hundreds of thousands of companies
8 relied on Facebook Platform in order to reboot its business for smartphones, presenting various
9 options for restricting public Platform APIs to its Board of Directors in August 2012, including:

10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]. Dec., ¶¶

18 32-41, Exs., 31-40; ¶ 159, Ex. 159; ¶ 193, Ex. 193. In November 2012, after many months of
19 discussion, Zuckerberg made his final decision to implement a version of the reciprocity policy
20 called "full reciprocity," instead of implementing a public pricing program like Twitter or a
21 revenue share model like the neutral platforms operated by Apple and Google - the top Platform

22 165.

23 ⁸ In mid-2012, mobile advertising accounted for 0% of Facebook's total revenues and yet today, as
24 a direct result of the scheme at the heart of Plaintiff's complaint, mobile advertising makes up
25 approximately 90% of Facebook's total revenues. This has been referred to as one of the most
26 "mindblowing" growth trajectories of any business in history. Dec., ¶¶ 26-31, Exs. 25-30; ¶ 152,
Exs. 151-152. Jud. Not. Dec., ¶¶ 37-43, 56, 58, 62-66, 69-72, 82, 96-98, 178, 197 (Exs. 36-42, 55,
57, 61-65, 68-71, 81, 95-97, 177, 196).

27 ⁹ The executives involved in these discussions in 2011 and 2012 include but are not limited to:
28 Zuckerberg, Olivan, Cox, Lessin, Sandberg, Bosworth, Rose, Ebersman, Wehner, Stretch, Badros
and Fischer. *See, e.g.*, Dec., ¶ 48, Ex. 47 (FB-00917792).

1 executive, Vernal, referred to this decision as [REDACTED] outside Zuckerberg's presence.¹⁰
2 Zuckerberg's full reciprocity policy caused Facebook's privacy and policy apparatus to
3 disintegrate in favor of an arbitrary enforcement environment in which Facebook offered user
4 data, and in particular friend data, to certain developers that were willing to reciprocate with
5 Facebook, typically by agreeing to purchase no less than \$250,000 per year in unrelated Neko
6 ads, while other developers that Facebook considered competitive were blacklisted from
7 accessing this data even though they never broke any rules or violated anyone's privacy.

8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED] Dec., ¶¶ 50-52, Exs. 49-51. Facebook
12 publicly announced an intentionally vague reciprocity policy in January 2013 that refused to
13 define a "competitive" service or "core functionality" in order to mislead companies into
14 thinking that only online social networks (e.g. MySpace, LinkedIn) would be considered
15 competitive; but Facebook's internal definition of a competitive service included virtually every
16 kind of consumer application, including those Facebook explicitly induced in its reciprocity
17 announcement to continue using APIs it had already decided to shut down. Dec., ¶ 53, Ex. 52.
18 Jud. Not. Dec., ¶¶ 10, 11, 12, 73 (Exs. 9, 10, 11, 72).¹¹ This enabled Facebook to use its policies
19 as an excuse to eliminate any developer for any reason whatsoever. Dec., ¶¶ 53-54, Exs. 52-53.

20 ¹⁰ Dec., ¶ 2, Ex. 1, at 136:18-144:7, 148:11-149:16, 151:6-153:10, 168:5-169:1, 177:14-181:20; ¶
21 5, Ex. 4, at 86:4-93:16, 102:7-103:14; ¶¶ 46-52, Exs. 45-51; ¶ 67, Ex. 66; ¶ 173, Ex. 173.

22 ¹¹ Facebook has claimed in two sets of verified discovery responses that it never had a reciprocity
23 policy and that no documents with the term "reciprocity" exist in its files, notwithstanding that its
24 public announcement of the reciprocity policy is readily available on the Internet and Facebook
25 has produced hundreds of emails that discuss this reciprocity policy. Jud. Not. Dec., ¶ 10, Ex. 9
26 (before the announcement of the reciprocity policy, section I.10 of Facebook Platform Policies,
27 part of the adhesion contract Plaintiff entered into with Facebook, stated: "Competing social
28 networks: (a) You may not use Facebook Platform to export user data into a competing social
network"); ¶ 11, Ex. 10 (on January 25, 2013, Facebook announces the reciprocity policy as an
update to section I.10, stating that "the vast majority of developers building social apps" should
"keep doing what you're doing," and that this applies to "music, fitness, news and general lifestyle
apps," but that a "much smaller number of apps" are trying to "replicate our functionality" and
Facebook has "had policies against this that we are further clarifying today," linking to the new

Dec., ¶ 175, Ex. 175.

Dec., ¶ 2, Ex. 1, at 204:12-209:16; ¶¶ 55-57, Exs. 54-56; ¶ 176, Ex. 176.

Dec., ¶ 2, Ex. 1, at 252:2-254:13; ¶ 62, Ex. 61.

I.10 section); ¶ 12, Ex. 11 (the new I.10 section reads: “Reciprocity and Replicating core functionality: (a) Reciprocity: Facebook Platform enables developers to build personalized, social experiences via the Graph API and related APIs. If you use any Facebook APIs to build personalized or social experiences, you must also enable people to easily share their experiences back with people on Facebook. (b) Replicating core functionality: You may not use Facebook Platform to promote, or to export user data to, a product or service that replicates a core Facebook product or service without our permission.”); ¶ 203, Ex. 202, at 4-12 (Facebook’s Supplemental Response to Plaintiff’s Third Demand for Production: “Facebook states that it does not have a ‘data reciprocity policy,’ and no such documents and communications exist” that contain the terms “data reciprocity” or “reciprocity”); ¶ 73, Ex. 72 (media reports on Facebook’s announcement of the reciprocity policy in January 2013).

¹² Dec., ¶ 2, Ex. 1, at 86:4-93:16, 151:6-153:10, 168:5-169:1, 204:12-209:16, 226:2-228:3; ¶ 46, Ex. 45; ¶¶ 58-60, Exs. 57-59.

¹³ Dec., ¶ 4, Ex. 3, at 14:25-15:14, 65:3-25, 70:2-71:13, 82:8-94:1, 96:15-108:16; ¶¶ 60-61, Exs. 59-60; ¶¶ 202-204, Exs. 202-204. Jud. Not. Dec., ¶¶ 14-20, 56, 58 (Exs. 13-19, 55, 57).

1 [REDACTED],
2 Plaintiff would not have built its business on Facebook Platform and Cambridge Analytica
3 would not have used Facebook data to steer the election towards Donald Trump. Put simply,
4 Zuckerberg did not anticipate how quickly people would start using phones to access the
5 Internet, so he took desperate, fraudulent measures to save his failing ads business in 2012.

6 The “full reciprocity” policy was unworkable as an actual policy but was extremely
7 effective as a ‘get out of jail free’ card by giving Facebook: (1) an excuse to threaten to or
8 actually shut down certain developers unless they purchased mobile ads or provided other
9 consideration Facebook deemed valuable in its sole discretion; (2) the ability to blame
10 developers for privacy violations related to data Facebook chose to funnel to developers without
11 any privacy controls; and (3) cover to continue to induce developers to rely on the very APIs
12 Zuckerberg had decided to privatize in 2012 in order to gain more leverage.¹⁴ Under cover of the
13 full reciprocity policy, the Growth team (Olivan) illegally accessed non-public information about
14 competitive applications in order to monitor their popularity and then directed the Platform team
15 (Vernal) to shut down an application once it became widely used.¹⁵ By early 2013, armed with
16 an official reciprocity policy vague enough for Zuckerberg to consider any company a criminal,
17 the initial pay-to-play tests began paying off as Neko ads grew faster than anyone’s wildest
18 expectations. Dec., ¶ 158, Ex. 158; ¶ 164, Ex. 164. In light of this success, [REDACTED]

19 [REDACTED]
20 [REDACTED] Dec., ¶ 75, Ex. 74; ¶¶ 166-167, Ex. 166-167. [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]

24 ¹⁴ Dec., ¶ 2, Ex. 1, at 168:5-169:1, 214:13-217:11, 228:9-232:5; ¶¶ 63-68, Exs. 62-67; ¶¶ 168-171,
25 Ex. 168-171; ¶ 173, Ex. 173.

26 ¹⁵ Olivan accomplished this by monitoring apps installed on the phones of 30 million people who
27 had installed Onavo, a virtual private network app that Facebook bought in 2013; Olivan was able
28 to track highly sensitive information about at least 82,000 software applications as a result of
violating the privacy of these 30 million people. Dec., ¶ 2, Ex. 1, at 52:9-53:12; ¶¶ 69-73, Exs. 68-72; ¶¶ 147-150, Exs. 146-149. Jud. Not. Dec., ¶¶ 100, 139, 142 (Exs. 99, 138, 141).

1 [REDACTED] Dec., ¶ 23, Ex. 22; ¶ 161, Ex. 161. [REDACTED]

5 [REDACTED] Dec., ¶ 74, Ex. 73.¹⁶ [REDACTED]

12 [REDACTED] Dec., ¶ 5,
13 Ex. 4, at 191:22-193:14, 222:23-226:16; ¶¶ 76-79, Exs. 75-78.

14 Beginning in September 2013, [REDACTED]

18 [REDACTED] Dec., ¶ 5, Ex. 4, at 218:22-
19 219:19; Dec., ¶¶ 80-82, Exs. 79-81; ¶¶ 189-190, Exs. 189-190.¹⁸ By December 2013, [REDACTED]

20 ¹⁶ [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED] Dec., ¶ 5, Ex. 4, at 298:10-306:7.

24 ¹⁷ Dec., ¶ 4, Ex. 3, at 134:13-135:20, 145:03-150:12; Dec., ¶ 6, Ex. 5, at 153:14-154:24, 161:12-
177:20; Dec., ¶¶ 75-76, Exs. 74-75.

25 ¹⁸ [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED] Facebook broke Tinder's app as
recently as April 2018, and then announced it was building its own dating apps to compete with
Tinder on May 1, 2018. Dec., ¶ 85, Ex. 84; ¶ 98, Ex. 97; ¶ 103, Ex. 102; ¶ 190, Ex. 190; ¶ 192, Ex.

Dec., ¶ 83, Exs. 82.

¹⁹

the ones Cambridge Analytica and Russia used to steer the 2016 Presidential election towards Donald Trump). Dec., ¶ 4, Ex. 3, at 187:13-188:16; ¶ 5, Ex. 4, at 183:11-184:16, 227:13-230:22; ¶ 101, Ex. 100. Facebook employees

Dec., ¶ 4, Ex. 3, at 160:06-162:18; ¶ 81, Ex. 80; ¶ 102, Ex. 101.

Dec., ¶ 10, Ex. 9, at 199:1-206:18; ¶¶ 103-104, Ex. 102-103.

Dec., ¶¶ 105-111, Ex. 104-110.

Dec., ¶¶ 112-113, Ex. 111-112.

192; ¶¶ 199-201, Ex. 199-201. Jud. Not. Dec., ¶ 85, 86, 201 (Exs. 84, 85, 200).

¹⁹ Dec., ¶ 4, Ex. 3, at 57:21-58:4, 167:25-178:05, 196:14-199:8, 201:10-203:13, 218:8-219:18; ¶ 5, Ex. 4, at 238:2-242:17, 243:7-252:5; ¶ 7, Ex. 6, at 121:3-127:1, 172:18-176:4; ¶¶ 84-100, Exs. 83-99.

1 [REDACTED]
2 [REDACTED]
3 [REDACTED] Dec., ¶¶ 131-132, Ex.
4 130-131.²¹ Zuckerberg's April 30, 2014 public announcement of the API restrictions and
5 Facebook's official blog post continued to misrepresent material facts and conceal facts that
6 undermined the facts disclosed, including: (1) concealing the specific APIs being restricted and
7 instead representing falsely that some "rarely used" APIs were being deprecated, [REDACTED]
8 [REDACTED]
9 [REDACTED] Dec., ¶ 4, Ex. 3, at 53:15-21, 61:11-62:13, 207:21-209:12; ¶ 5, Ex. 4,
10 at 25:6-28:25; 119:7-16, 151:21-152:18; Dec., ¶¶ 133-135, Ex. 132-134; ¶ 162-163, Ex. 162-163;
11 (2) [REDACTED]
12 [REDACTED]. Dec., ¶ 136, Ex. 135; and (3)
13 [REDACTED] Dec., ¶¶
14 137-138, Ex. 136-137. Facebook's defense that the API restrictions were implemented
15 exclusively to protect user trust and privacy is plainly false as: (1) the Login revamp applied only
16 to apps downloaded by *that user*, whereas the anti-competitive API restrictions applied to apps
17 downloaded by that user's friends; (2) a user already had the ability for many years to control
18 whether their friends could access the user's data in third-party applications, but Facebook hid
19 these controls and set the default to "on" in order to fabricate consent; and (3) [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]; [REDACTED]

25
26 ²¹ After shutting down many competitive apps, Facebook quickly begins to dominate a wide range
27 of new markets, including video, local commerce, payments, messaging, and much more, such
28 that 4 of the top 5 apps worldwide quickly become Facebook apps and venture capital funding in
consumer software startups plummets. Jud. Not. Dec., ¶¶ 76, 79, 89, 99, 102, 105, 106, 109, 112,
117, 118, 120, 128-130, 138, 144-149, 165, 166 (Exs. 75, 78, 88, 98, 101, 104, 105, 108, 111, 116,
117, 119, 127-129, 137, 143-148, 164, 165).

1 [REDACTED]
2 [REDACTED]²² Zuckerberg's
3 2012 scheme to weaponize data as a way of gaining leverage over developers in order to force
4 them to buy mobile ads resulted in countless privacy issues reported by the media, which
5 Facebook remarkably used as cover to shut down developers that had always abided by the
6 rules.²³ In other words, Facebook was able to unjustly enrich itself both from the 2012-2014 pay-
7 to-play scheme that saved its advertising business *and* from the inevitable privacy violations the
8 scheme caused! Facebook reaped the benefits of transitioning its ads business to phones *and*
9 wiping out competition to make room for a wide range of new Facebook products.

10 Plaintiff has demonstrated that defendants' conduct violates all three prongs of Section
11 17200. Defendants' conduct violates the "unfair" prong under any of the three standards as
12 defendants represented a fair and open platform and then enriched themselves by maliciously,
13 unethically, oppressively and punitively operating a closed platform that took advantage of the
14 reasonable reliance of millions of consumers and tens of thousands of companies to their
15 substantial detriment and with no countervailing benefit.²⁴ Defendants' conduct violates the
16 "unlawful" prong as the bait and switch scheme triggers a variety of predicate violations,
17 including common law tort and fraud, California's misrepresentation and concealment statutes,
18 California's false advertising law, and the July 27, 2012 FTC Order directing that defendants'
19 "shall not misrepresent in any manner...the extent to which it maintains the privacy or security
20 of covered information."²⁵ Plaintiff has also met its burden on the "fraud" prong. *See In re*

21 ²² Dec., ¶ 2, Ex. 1, at 64:22-76:10, 120:23-121:18; ¶ 4, Ex. 3, at 94:3-95:12, 123:20-125:08,
22 127:02-127:25, 128:01-128:10, 129:06-131:23; ¶ 139, Ex. 138; ¶ 172, Ex. 172; ¶¶ 177-180, Exs.
23 177-180; ¶ 188, Ex. 188.

24 ²³ Jud. Not. Dec., ¶¶ 23, 76, 79, 87, 88, 100, 101, 104, 107, 115, 116, 123-125 131, 136, 139, 140-
25 143, 153-157, 159-162, 172-174, 179, 180, 189, 193, 199 (Exs. 22, 75, 78, 86, 87, 99, 100, 103,
106, 114, 120, 122-124, 130, 135, 138, 139-142, 152-156, 158-161, 171-173, 178, 179, 188, 192,
198).

26 ²⁴ *See Daugherty v. American Honda Motor Co., Inc.* (2006) 144 Cal.App.4th 824, 839; *Smith v.*
27 *State Farm Mutual Automobile Ins. Co.* (2001) 93 Cal.App.4th 700, 719; *Scripps Clinic v.*
Superior Court (2003) 108 Cal.App.4th 917, 940.

28 ²⁵ Jud. Not. Dec., ¶ 30, Ex. 29, at 3. Further, Zuckerberg's bait and switch scheme violates the
Cartwright Act as Facebook maliciously tied its Platform APIs (the tying product) to its Neko

1 *Tobacco II Cases* (2009) 46 Cal.4th 298, 312. An injunction is required as Facebook still induces
2 developers to build on its Platform by representing it as open and fair and has even extended its
3 Platform to Messenger using the same fraudulent playbook.²⁶

4 **C. Plaintiff Is Likely to Prevail on Its Remaining Claims**

5 Plaintiff has met its burden to prevail on its breach of contract action. CACI (2017) 303.
6 Facebook and Plaintiff entered into a standard adhesion contract, Facebook's December 2012
7 Statement of Rights and Responsibilities (SRR). Dec., ¶ 146, Ex. 145; ¶ 4, Ex. 3, at 35:2-23; ¶ 6,
8 Ex. 5, at 22:17-23:12; ¶ 7, Ex. 6, at 45:4-21, 57:4-63:5. Plaintiff performed all of its obligations.
9 Dec., ¶ 5, Ex. 4, at 17:15-21, 19:1-20:8, 23:15-25:5, 37:19-25. Facebook failed to perform by
10 refusing to provide "all rights to APIs, data and code" that Facebook made available and
11 breached the contract by violating its representations of open, equal and fair access to its APIs
12 that fraudulently induced Plaintiff and others to perform under the contract. Dec., ¶ 146, Ex. 145
13 (Section 9.8); ¶ 5, Ex. 4, at 38:13-40:21; ¶ 7, Ex. 6, at 45:4-21, 219:23-222:1. Plaintiff and many
14 others were harmed, and Facebook's breach was a substantial factor in the harm. Dec., ¶ 8, Ex. 7,
15 at 205:17-25; ¶ 7, Ex. 6, at 67:8-83:3, 98:10-99:4, 103:10-107:24; ¶ 3, Ex. 2, at 121:5-123:11.

16 Plaintiff has met its burden to prevail on its fraud claims. CACI (2017) 1900, 1901, 1903.
17 Defendants made numerous representations of fact to Plaintiff they knew to be false around
18 managing a level competitive playing field while intentionally and systematically tilting that
19 playing field in its favor to the detriment of tens of thousands of startups and small businesses.²⁷

20 advertising product (the tied product), which are entirely unrelated and distinct products. Facebook
21 refused to offer the Platform APIs unless companies purchased Neko advertising. Facebook had
22 sufficient economic power in the market for Platform APIs (it was the sole provider of these APIs)
23 to coerce companies into purchasing Neko advertising, and the tying arrangement prohibited an
24 estimated 40,000 companies from purchasing advertising (the tied product) as they no longer had
products to advertise. CACI (2017) 3421 (Bus. & Prof. Code, § 16727); Dec., ¶¶ 140-144, Ex. 139-143.

25 ²⁶ Dec., ¶ 6, Ex. 5, at 26:1-29:4, 42:17-45:10; ¶ 145, Ex. 144; ¶¶ 183-186, Ex. 183-186. Jud. Not.
26 Dec., ¶¶ 2, 21, 22, 80, 81, 83-86, 91-94, 103, 119, 122, 126, 127, 132, 133, 137, 138, 150-152, 171
(Exs. 1, 20, 21, 79, 80, 82-85, 90-93, 102, 118, 121, 125, 126, 131, 132, 136, 137, 149-151, 170).

27 ²⁷ Dec., ¶¶ 11-14, Exs. 10-13; ¶ 2, Ex. 1, at 82:7-85:20, 177:14-181:20, 195:18-199:7, 231:25-
28 233:18, 257:20-258:14; ¶ 3, Ex. 2, at 45:16-56:08, 75:21-79:20, 99:11-120:4, 125:19-131:20,
167:9-168:20; ¶ 4, Ex. 3, at 32:2-22, 73:7-74:20, 78:25-81:25; ¶ 5, Ex. 4, at 60:9-61:25.

1 Defendants intended that Plaintiff rely on the representations.²⁸ Plaintiff reasonably relied on the
2 representations.²⁹ Further, Facebook and Plaintiff were in a business relationship.³⁰ Facebook
3 disclosed some facts but intentionally failed to disclose others known only to Facebook while
4 preventing Plaintiff from discovering certain facts.³¹ Plaintiff did not know the concealing facts
5 and if they had been disclosed, Plaintiff would not have built its business on Facebook Platform.
6 Dec., ¶ 8, Ex. 7, at 162:13-163:16, 223:6-15. Plaintiff was harmed by this conduct.³²

7 Plaintiff has met its burden to prevail on its intentional tort action. CACI (2017) 2201.
8 Plaintiff maintained contracts with its users. Dec., ¶ 8, Ex. 7, at 181:23-183:9, 195:25-196:16.
9 Facebook knew of these contracts as its SRR required them. Dec., ¶ 6, Ex. 5, at 49:18-50:5.
10 Facebook knew it would disrupt and intended to disrupt Plaintiff's contracts because Plaintiff
11 was included in the list of 40,000 apps audited in 2013 and 2014 that would break as a result of
12 Zuckerberg's scheme. Dec., ¶ 6, Ex. 5, at 174:7-177:20; Dec., ¶ 4, Ex. 3, at 55:21-56:17, 122:14-
13 123:06, 231:18-233:24; Dec., ¶ 7, Ex. 6, at 108:1-111:13. Facebook's conduct prevented
14 Plaintiff from performing in its contracts with its users. Dec., ¶ 8, Ex. 7, at 162:13-163:16, 223:6-
15 15. Plaintiff was harmed by this conduct. Dec., ¶ 8, Ex. 7, at 205:17-25; ¶ 10, Ex. 9, at 269:5-25.

16 **II. CONCLUSION**

17 For the foregoing reasons, Defendants' Anti-SLAPP Motions should be denied on the
18 grounds of Cal. Code Civ. Proc. § 425.17 to ensure Facebook cannot further stay discovery and
19 jeopardize the trial date once again by appealing the Court's Order.

20 ²⁸ Dec., ¶ 2, Ex. 1, at 125:7-130:14, 268:6-272:4; ¶ 3, Ex. 2, at 188:23-189:15; ¶ 4, Ex. 3, at 14:25-
21 15:14, 21:23-22:2, 28:8-22, 40:14-41:14, 59:2-61:4, 65:3-25, 70:2-71:13, 82:8-94:1, 96:15-
22 108:16; ¶¶ 15-17, Exs. 14-16; ¶¶ 60-61, Exs. 59-60.

23 ²⁹ Dec., ¶ 3, Ex. 2, at 90:6-92:14; ¶ 4, Ex. 3, at 21:1-22, 53:22-54:17; ¶ 7, Ex. 6, 360:2-25; ¶ 9, Ex.
24 8, at 115-117; ¶ 10, Ex. 9, at 252.

25 ³⁰ Dec., ¶ 146, Ex. 145; ¶ 4, Ex. 3, at 35:2-23; ¶ 6, Ex. 5, at 22:17-23:12; ¶ 7, Ex. 6, at 45:4-21, 57:4-
26 63:5.

27 ³¹ Dec., ¶ 2, Ex. 1, at 204:12-209:16; ¶ 4, Ex. 3, at 14:25-15:14, 21:23-22:2, 28:8-22, 40:14-41:14,
28 59:2-61:4, 65:3-25, 70:2-71:13, 82:8-94:1, 96:15-108:16; Dec., ¶¶ 53-57, Exs. 52-56.

³² Dec., ¶ 8, Ex. 7, at 205:17-25; ¶ 10, Ex. 9, at 199:1-201:1, 252, 269:5-25.

1 DATED: May 17, 2018

GROSS & KLEIN LLP

2 BIRNBAUM & GODKIN, LLP

3
4 By: /s/ David. S. Godkin

5 Stuart G. Gross, Esq.

6 David S. Godkin (admitted *pro hac vice*)

7 James E. Kruzer (admitted *pro hac vice*)

8 Attorneys for Plaintiff

9 Six4Three, LLC

1 **PROOF OF SERVICE**

2 I, Cheryl A. McDuffee, declare:

3 I am a citizen of the United States and employed in Suffolk County, Massachusetts. I am
4 over the age of eighteen years and not a party to the within-entitled action. My business address
5 is 280 Summer Street, Boston, MA 02210. On May 17, 2018, I served a copy of the within
6 document(s):

7 **MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO**
8 **DEFENDANTS' SPECIAL MOTIONS TO STRIKE**

9 ☒ by electronic service, per the agreement of the parties, by emailing a true and
10 correct copy through counsel's email address to Defendant's counsel of record at
the email addresses set forth below.

11 Joshua H. Lerner (jlerner@durietangri.com)
12 Sonal N. Mehta (smehta@durietangri.com)
13 Laura Miller (lmiller@durietangri.com)
14 Catherine Kim (ckim@durietangri.com)
15 Durie Tangri (service-six4three@durietangri.com)
217 Leidesdorff Street
16 San Francisco, CA 94111
17 P (415) 376 - 6427
Attorney for Defendant
FACEBOOK, INC.

18 and

19 Judge V. Raymond Swope (By hand)
20 Department 23
Complex Civil Litigation

21 I declare under penalty of perjury under the laws of the State of California that the above
22 is true and correct.

23 Executed May 17, 2018, at Boston, Massachusetts.

24
25 */s/ Cheryl A. McDuffee*

26 _____
27 Cheryl A. McDuffee
28

1 Stuart G. Gross (#251019)
Benjamin H. Klein (#313922)
2 GROSS & KLEIN LLP
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4 sgross@grosskleinlaw.com
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5 Of counsel:

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7 James E. Kruzer (admitted *pro hac vice*)
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Boston, MA 02210
9 (617) 307-6100
godkin@birnbaumgodkin.com
10 kruzer@birnbaumgodkin.com

11 Attorneys for Plaintiff,
SIX4THREE, LLC, a Delaware
12 limited liability company

13 SUPERIOR COURT OF CALIFORNIA

14 COUNTY OF SAN MATEO

15 SIX4THREE, LLC, a Delaware limited
liability company,

16 Plaintiff,

17 v.

18 FACEBOOK, INC., a Delaware corporation;
MARK ZUCKERBERG, an individual;
19 CHRISTOPHER COX, an individual;
JAVIER OLIVAN, an individual;
20 SAMUEL LESSIN, an individual;
MICHAEL VERNAL, an individual;
21 ILYA SUKHAR, an individual; and
DOES 1 through 50, inclusive,

22 Defendants.
23 _____

) Case No. CIV 533328
)
)

) **Assigned For All Purposes To Hon. V.**
) **Richard Swope**
)

) **DECLARATION OF DAVID S.**
) **GODKIN IN OPPOSITION TO**
) **DEFENDANTS' SPECIAL MOTIONS**
) **TO STRIKE (ANTI-SLAPP)**
)

HEARING DATE: July 2, 2018

HEARING TIME: 9:00 a.m.

DEPARTMENT 23

JUDGE: Hon. V. Raymond Swope

FILING DATE: April 10, 2015

TRIAL DATE: April 25, 2019

1 I, David S. Godkin, declare:

2 1. I am an attorney at law and a member of the Law Offices of Birnbaum & Godkin,
3 LLP, counsel for plaintiff Six4Three, LLC (“643”) in the above-captioned action.

4 2. True and correct copies of the relevant portions of the testimony of Michael Vernal
5 are attached hereto as Exhibit 1, including [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
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[REDACTED]

3. True and correct copies of the relevant portions of the testimony of Ali Partovi are attached hereto as Exhibit 2, including 45:16-56:08, 75:21-79:20 (admits Facebook explicitly promised it would manage and operate Platform as a level competitive playing field and that developers would be able to rely on Platform to build businesses), 90:6-92:14 (Partovi felt at the time that it was better to build a business on Facebook Platform than building a business from scratch on your own or using another platform), 99:11-120:4 [REDACTED]

[REDACTED]

1 [REDACTED], 121:5-123:11 (admits Facebook’s conduct caused an employee
2 exodus and made it impossible for iLike to recruit staff, business forecasts were slashed, and iLike
3 was forced to sell below its market valuation), 125:19-131:20 (Facebook threatens to shut iLike
4 down unless it sells to Facebook for “not very much”), 167:9-168:20 (authenticates Facebook
5 Platform FAQ (Exhibit 10) and admits Facebook’s statements in the FAQ cohere with his
6 understanding of Facebook’s affirmative representations of Platform), 188:23-189:15 (admits he
7 helped Facebook grow Platform at Facebook’s request by encouraging other companies to build
8 businesses on Facebook Platform).
9

10 4. True and correct copies of the relevant portions of the testimony of Simon Cross
11 are attached hereto as Exhibit 3, including [REDACTED]
12

13 [REDACTED]
14

15 [REDACTED]
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17 [REDACTED]
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19 [REDACTED]
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21 [REDACTED]
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5. True and correct copies of the relevant portions of the testimony of Facebook's

PMQ Allison Hendrix are attached hereto as Exhibit 4, including [REDACTED]

[REDACTED]

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[REDACTED]

6. [REDACTED] True and correct copies of the relevant portions of the testimony of Konstantinos Papamiltiadis are attached hereto as Exhibit 5, [REDACTED]

[REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4
5 7. True and correct copies of the relevant portions of the testimony of Bernard Hogan
6 are attached hereto as Exhibit 6, including 45:4-21 (admits it was reasonable to interpret Section
7 9.8 of the SRR giving “all rights to APIs, data, code you receive from us” to mean that “if they
8 had offered it for me to use as a developer, then I could use it as a developer”), 57:4-63:5 (admits
9 that the SRR’s “limit access to data” provision reasonably refers to limiting the volume or rate of
10 data transferred via the APIs – and not that Facebook could shut down entire categories of critical
11 APIs – and that if you abide by the rules “developers would be treated fairly, that they would be
12 able to access the data that is stipulated by Facebook as being accessible”) 67:8-83:3 (describes at
13 length how Facebook’s Graph API 2.0 harmed his applications and research and many other
14 developers), 98:10-99:4 (estimates the total monetary value of the harm caused to him by
15 Facebook at \$200,000), 103:10-107:24 (admits that because of Graph API 2.0 his applications
16 “just couldn’t work”), 108:1-111:13 (admits that in conversations with a Facebook employee, the
17 employee “well understood that these changes would inhibit my applications from working” and
18 the employee suggested he seek employment at Facebook to continue his work), 121:3-127:1,
19 172:18-176:4 (admits it is evident to an informed developer that some applications were
20 whitelisted to continue to access this data, citing Tinder as an example, because the applications
21 still function as they had before Graph API 2.0), 219:23-222:1 (“I had a pretty strong
22 understanding that the social network data would be consistently available for a long period of
23 time, and I certainly acted under the expectations that such core functionality – so core that it’s in
24 the basic permissions – would still be available for a long time”), [REDACTED]
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1 [REDACTED]
2 [REDACTED].
3 8. True and correct copies of the relevant portions of the testimony of Ted Kramer are
4 attached hereto as Exhibit 7, including 162:13-163:16, 223:6-15 (643 did not receive notice from
5 Facebook until January 2015 that the app would no longer function), 205:17-25 (643 had raised
6 approximately \$250,000 in seed capital, which was lost entirely as a result of Facebook's bait and
7 switch scheme), 181:23-183:9, 195:25-196:16 (643 had contracts with 4,481 end users who had
8 downloaded its app during a trial period).

9
10 9. True and correct copies of the relevant portions of the testimony of Tim Gildea are
11 attached hereto as Exhibit 8, including 115-117 (admits he was aware of Facebook Platform for
12 many years before co-founding 643, likely first became aware of Facebook Platform in 2007, had
13 knowledge of various Facebook Platform APIs, including the friends APIs, and that Facebook
14 Platform was a "pretty common thing in the developer community, so it was something that just
15 about everyone who was developing applications was aware of").

16
17 10. True and correct copies of the relevant portions of the testimony of Tom
18 Scaramellino are attached hereto as Exhibit 9, including 199:1-206:18 (admits 643's entire
19 business plan relied upon Facebook Platform and Facebook's representations regarding how it
20 would manage it, including the prior five years of Facebook's conduct; admits he contacted
21 Facebook employee Michael Huang in person and over email and was refused any discussion
22 regarding how 643 could continue to operate after Graph API 2.0), 252 (admits he was aware of
23 and relied on the Facebook Platform announcement, the Facebook Platform FAQ, various
24 Facebook blog posts, Facebook's Graph API 2010 announcement, various news articles regarding
25 speeches and public representations by Zuckerberg and others, and similar public materials when
26 determining whether 643 was a sound investment); 269:5-272:2 (admits 643's last established
27
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1 valuation was approximately \$4 million and that this valuation was comparable to other startups at
2 this stage of development).

3 11. A true and correct copy of Exhibit 1 to Plaintiff's Fourth Amended Complaint,
4 Facebook's official Facebook Platform FAQ, is attached hereto as Exhibit 10.

5 12. A true and correct copy of FB-00845980 - FB-00845983 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED] is attached hereto as Exhibit 11.

10 13. A true and correct copy of FB-00846041 - FB-00846042 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED] is attached hereto as Exhibit 12.

15 14. A true and correct copy of FB-01054694-FB-01054697 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED] attached hereto as Exhibit 13.

20 15. A true and correct copy of FB-00846005 - FB-00846011 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED] is attached hereto as Exhibit 14.

25 16. A true and correct copy of FB-00927553 - FB-00927556 [REDACTED]
26 [REDACTED]
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[REDACTED]

[REDACTED] (FB-00927553)) is attached hereto as Exhibit 15.

17. A true and correct copy of FB-01215536 - FB-01215539 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (FB-01215536)) is attached hereto as Exhibit 16.

18. A true and correct copy of FB-00905310 - FB-00905313 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(FB-00905312)) is attached hereto as Exhibit 17.

19. A true and correct copy of FB-01174454 - FB-01174462 [REDACTED]

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1 [REDACTED]
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3 [REDACTED]
4 [REDACTED] (FB-
5 [REDACTED]
6 01174454)) is attached hereto as Exhibit 18.

7 20. A true and correct copy of FB-01062011 - FB-01062014 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED] (FB-01062011)) is attached
14 hereto as Exhibit 19.

15 21. A true and correct copy of FB-00439054 - FB-00439068 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED] is attached hereto as Exhibit 20.

21 22. A true and correct copy of FB-01223017 - FB-01223018 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED] is attached
26 hereto as Exhibit 21.

27 23. A true and correct copy of FB-00235809 - FB-00235814 [REDACTED]
28 [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED] is attached hereto
as Exhibit 22.

24. A true and correct copy of FB-00433779 - FB-00433783 [REDACTED]
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[REDACTED] (FB-00433779)) is attached hereto as Exhibit 23.

25. A true and correct copy of FB-00598434 - FB-00598436 [REDACTED]
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[REDACTED] is attached hereto as Exhibit 24.

26. A true and correct copy of FB-01364327 [REDACTED]
[REDACTED]
[REDACTED] is
attached hereto as Exhibit 25.

27. A true and correct copy of FB-00986265 - FB-00986266 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] is attached hereto as
Exhibit 26.

28. A true and correct copy of FB-01381966-FB-01381989 [REDACTED]
[REDACTED]

1 [REDACTED] (FB-01381971))

2 is attached hereto as Exhibit 27.

3 29. A true and correct of FB-01382308-FB-0132334 [REDACTED]

7 [REDACTED] (FB-01382310)) is attached hereto as Exhibit 28.

8 30. A true and correct copy of FB-01389741-FB-01389752 [REDACTED]

11 [REDACTED] (FB-
12 01389743)) is attached hereto as Exhibit 29.

13 31. A true and correct copy of FB-00495737 - FB-00495739 [REDACTED]

19 [REDACTED] (FB-00495737)) is attached hereto as Exhibit 30.

20 32. A true and correct copy of FB-01203441 - FB-01203443 [REDACTED]

25 [REDACTED] (FB-01203441)) is attached hereto as Exhibit 31.

26 33. A true and correct copy of FB-00986079 - FB-00986085 [REDACTED]

[REDACTED] (FB-00986079)) is attached hereto as Exhibit 32.

34. A true and correct copy of FB-01368413 - FB-01368440 [REDACTED] is attached hereto as Exhibit 33.

35. A true and correct copy of FB-01368446 - FB-01368448 [REDACTED] is attached hereto as Exhibit 34.

36. A true and correct copy of FB-01389634-FB-01389639 [REDACTED] is attached hereto as Exhibit 35.

37. A true and correct copy of FB-01370841- FB-01370845 [REDACTED] (FB-01370841 - FB-01370843)) is attached hereto as Exhibit 36.

38. A true and correct copy of FB-01389002 - FB-01389007 [REDACTED]

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[REDACTED] is attached hereto as Exhibit 37.

39. A true and correct copy of FB-01389021- FB-01389038 [REDACTED]

[REDACTED]
[REDACTED]
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[REDACTED]

(FB-01389029)) is attached hereto as Exhibit 38.

40. A true and correct copy of FB-01368198- FB-01368210 [REDACTED]

[REDACTED]
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[REDACTED] is attached hereto as Exhibit 39.

41. A true and correct copy of FB-00943406 - FB-00943407 [REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED] (FB-00943406)) is attached hereto as Exhibit 40.

42. A true and correct copy of FB-01369059 - FB-01369087 [REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED] is attached hereto as Exhibit 41.

43. A true and correct copy of FB-01218365- FB-01218366 [REDACTED]

[REDACTED]

[REDACTED] is attached hereto
as Exhibit 42.

44. A true and correct copy of FB-01220345-FB-01220350 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] is attached hereto as Exhibit 43.

45. A true and correct copy of FB-00934373 [REDACTED]

[REDACTED] is attached hereto as Exhibit
44.

46. A true and correct copy of FB-00423235 - FB-00423237 [REDACTED]

[REDACTED]

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[REDACTED] is attached hereto as Exhibit 45.

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47. A true and correct copy of FB-00948764-FB-00948765 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (FB-00948765)) is attached hereto as Exhibit 46.

48. A true and correct copy of FB-00917791 - FB-00917797 [REDACTED]

[REDACTED]

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[REDACTED] (FB-00917792 - FB-00917793)) is attached hereto as Exhibit 47.

49. A true and correct copy of FB-01155756 - FB-01155759 [REDACTED]

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[REDACTED]

(FB-01155756)) is attached hereto as Exhibit 48.

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50. A true and correct copy of FB-01368932 - FB-01368967 [REDACTED]

[REDACTED]
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[REDACTED] (FB-01368946)) is attached hereto as Exhibit 49.

51. A true and correct copy of FB-01368113- FB-01368121 [REDACTED]

[REDACTED]
[REDACTED]

[REDACTED] is attached hereto as Exhibit

50.

52. A true and correct copy of FB-01370735 - FB-01370736 [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] is attached hereto as Exhibit 51.

53. A true and correct copy of FB-00095704 - FB-00095717 [REDACTED]

[REDACTED]
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1 [REDACTED]
2 [REDACTED] is
3 attached hereto as Exhibit 52.

4 54. A true and correct copy of FB-00947909 - FB-00947911 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
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9 [REDACTED]
10 [REDACTED]
11 [REDACTED] (FB-00947909)) is
12 attached hereto as Exhibit 53.

14 55. A true and correct copy of FB-00949066 - FB-00949067 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED] (FB-00949066)) is attached hereto as Exhibit 54.

19 56. A true and correct copy of FB-00943408 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED] is attached hereto as Exhibit 55.

24 57. A true and correct copy of FB-01368870 - FB-013688702 [REDACTED]
25 [REDACTED]
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[REDACTED]

[REDACTED] (FB-01368870)) is attached hereto as Exhibit 56.

58. A true and correct copy of FB-01366036 - FB-01366070 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (FB-01366036)) is attached hereto as Exhibit 57.

59. A true and correct copy of FB-01373378 - FB-01373380 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] is attached hereto as Exhibit 58.

60. A true and correct copy of FB-00567344 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] is attached hereto as Exhibit 59.

61. A true and correct copy of FB-00858137 - FB-00858140 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

1 [REDACTED] (FB-00858139 - FB-00858140)) is
2 attached hereto as Exhibit 60.

3 62. A true and correct copy of FB-01312769 - FB-01312773 [REDACTED]
4 [REDACTED]
5 [REDACTED]
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7 [REDACTED]
8 [REDACTED]

9 [REDACTED] (FB-01312772)) is attached hereto as Exhibit 61.

10 63. A true and correct copy of FB-01150813 - FB-01150820 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]

14 [REDACTED] is attached hereto as Exhibit 62.

15 64. A true and correct copy of FB-00948246 - FB-00948251 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]

21 [REDACTED] is attached hereto as
22 Exhibit 63.

23 65. A true and correct copy of FB-00948264 - FB-00948268 [REDACTED]
24 [REDACTED]
25 [REDACTED]
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[REDACTED]

[REDACTED] is attached hereto as Exhibit 64.

66. A true and correct copy of FB-00908514 - FB-00908519 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (FB-00908517)) is attached hereto as Exhibit 65.

67. A true and correct copy of FB-00954660 - FB-00954663 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] is attached hereto as Exhibit 66.

68. A true and correct copy of FB-00963936 - FB-00963937 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (FB-00963937)) is

attached hereto as Exhibit 67.

69. A true and correct copy of FB-00899292 - FB-00899306 [REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED] is attached hereto as Exhibit 68.

70. A true and correct copy of FB-01367812 - FB-01367818 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

is attached hereto as Exhibit 69.

71. A true and correct copy of FB-01370641 - FB-01370643 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] attached hereto as Exhibit 70.

72. A true and correct copy of FB-01388109 - FB-01388112 [REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED] is attached hereto as Exhibit 71.

73. A true and correct copy of FB-00921658 - FB-00921659 [REDACTED]

[REDACTED]

[REDACTED] is attached hereto as Exhibit 72.

74. A true and correct copy of FB-00061221- FB-00061224 [REDACTED]

[REDACTED]

[REDACTED]

(FB-00061222)) is attached hereto as Exhibit 73.

75. A true and correct copy of FB-00061650 - FB-00061654

(FB-00061654)) is attached hereto as Exhibit 74.

76. A true and correct copy of FB-00061365- FB-00061369

is attached hereto as Exhibit 75.

77. A true and correct copy of FB-00061233 - FB-00061236

is attached hereto
as Exhibit 76.

78. A true and correct copy of FB-01363526 – FB-01363532

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[REDACTED] is attached hereto as Exhibit 77.

79. A true and correct copy of FB-01352115- FB-01352154 [REDACTED]

[REDACTED]

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[REDACTED] is attached hereto as Exhibit 78.

80. A true and correct copy of FB-00061249 - FB-00061252 [REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED] is attached hereto as Exhibit

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81. A true and correct copy of FB-00061437 - FB-00061440 [REDACTED]

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[REDACTED] is attached hereto as Exhibit 80.

1 82. A true and correct copy of FB-00494539 - FB-00494544 [REDACTED]
2 [REDACTED]
3 [REDACTED] is attached hereto as Exhibit 81.
4 83. A true and correct copy of FB-01352696 - FB-01352748 [REDACTED]
5 [REDACTED]
6 [REDACTED] is
7 attached hereto as Exhibit 82.
8 84. A true and correct copy of FB-00427400 - FB-00427406 [REDACTED]
9 [REDACTED]
10 [REDACTED]
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13 [REDACTED] is attached hereto as Exhibit 83.
14 85. A true and correct copy of FB-00046266 - FB-00046271 [REDACTED]
15 [REDACTED]
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19 [REDACTED]
20 [REDACTED]
21 [REDACTED] (FB-00046269 - FB-00046270)) is
22 attached hereto as Exhibit 84.
23 86. A true and correct copy of FB-00031245 - FB-00031262 [REDACTED]
24 [REDACTED] is attached hereto as Exhibit 85.
25 87. A true and correct copy of FB-00042856 - FB-00042857 [REDACTED]
26 [REDACTED] is attached hereto as Exhibit 86.
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1 88. A true and correct copy of FB-00042899 - FB-00042910 [REDACTED]
2 [REDACTED] is attached hereto as Exhibit 87.
3 89. A true and correct copy of FB-00042763 - FB-00042769 [REDACTED]
4 [REDACTED] is attached hereto as Exhibit 88.
5 90. A true and correct copy of FB-00042722 [REDACTED]
6 [REDACTED] is attached hereto as Exhibit 89.
7 91. A true and correct copy of FB-00042373 - FB-00042378 [REDACTED]
8 [REDACTED] is attached hereto as Exhibit 90.
9 92. A true and correct copy of FB-00043830 - FB-00043835 [REDACTED]
10 [REDACTED] is attached hereto as Exhibit 91.
11 93. A true and correct copy of FB-00045735 - FB-00045738 [REDACTED]
12 [REDACTED] is attached hereto as Exhibit 92.
13 94. A true and correct copy of FB-00043884 - FB-00043889 [REDACTED]
14 [REDACTED]
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1 [REDACTED] is
2 attached hereto as Exhibit 93.

3 95. A true and correct copy of FB-00046047 - FB-00046058 [REDACTED]
4 [REDACTED]
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8 [REDACTED] is attached hereto as Exhibit 94.

9 96. A true and correct copy of FB-00046279 - FB-00046283 [REDACTED]
10 [REDACTED]

11 is attached hereto as Exhibit 95.

12 97. A true and correct copy of FB-00277665 - FB-00277674 [REDACTED]
13 [REDACTED]
14 [REDACTED]
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16 [REDACTED]

17 (FB-00277665)) is attached hereto as Exhibit 96.

18 98. A true and correct copy of FB-00044220 - FB-00044227 [REDACTED]
19 [REDACTED]
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23 [REDACTED]

24 is attached hereto as Exhibit 97.

25 99. A true and correct copy of FB-00454582 - FB-00454584 [REDACTED]
26 [REDACTED]
27 [REDACTED]

28 is attached hereto as Exhibit 98.

1 100. A true and correct copy of FB-01219463 [REDACTED]
2 [REDACTED] is attached hereto as Exhibit 99.

3 101. A true and correct copy of FB-00521468 - FB-00521484 [REDACTED]
4 [REDACTED]
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7 [REDACTED] (FB-
8 00521473)) is attached hereto as Exhibit 100.

9 102. A true and correct copy of FB-00456587 - FB-00456588 [REDACTED]
10 [REDACTED]
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21 [REDACTED] (FB-00456587)) is attached hereto as Exhibit 101.

22 103. A true and correct copy of FB-00047444 - FB-00047451 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED] is
26 attached hereto as Exhibit 102.

27 104. A true and correct copy of FB-00045920 - FB-00045927 [REDACTED]
28 [REDACTED]

(b) (7)(C), (b) (7)(D) (FB-00045923 - FB-00045924)) is attached hereto as Exhibit 103.

105. A true and correct copy of FB-00433628 - FB-00433629

[REDACTED] is attached hereto as Exhibit 104.

106. A true and correct copy of FB-00551862 - FB-00551864

[REDACTED] (FB-00551862)) is attached hereto as Exhibit 105.

107. A true and correct copy of FB-00575243 - FB-00575248

(b) (7)(C), (b) (7)(D) (FB-00575243)) is attached hereto as Exhibit 106.

108. A true and correct copy of FB-00576265 - FB-00576268

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[REDACTED] is attached hereto as Exhibit 107.

109. A true and correct copy of FB-00549032 - FB-00549033 [REDACTED]

[REDACTED]
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[REDACTED] is attached hereto as Exhibit 108.

110. A true and correct copy of FB-01363612 - FB-01363614 [REDACTED]

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[REDACTED] is attached hereto as Exhibit 109.

1 111. A true and correct copy of FB-01363618 - FB-01363619 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED] is
7 attached hereto as Exhibit 110.

8 112. A true and correct copy of FB-00528042 - FB-00528043 [REDACTED]
9 [REDACTED]
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18 [REDACTED]
19 [REDACTED] (FB-00528042)) is
20 attached hereto as Exhibit 111.

21 113. A true and correct copy of FB-00061393 - FB-00061395 [REDACTED]
22 [REDACTED]
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00061393 - FB-00061394)) is attached hereto as Exhibit 112.

114. A true and correct copy of FB-01353432 - FB-01353439

is attached hereto as Exhibit 113.

115. A true and correct copy of FB-01364691 - FB-01364694

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[REDACTED]

[REDACTED] (FB-01364691))

is attached hereto as Exhibit 114.

116. A true and correct copy of FB-01364306 - FB-01364312 [REDACTED]

[REDACTED]

[REDACTED] is attached hereto as Exhibit 115.

117. A true and correct copy of FB-01363717 - FB-01363724 [REDACTED]

[REDACTED]

[REDACTED] is attached hereto as Exhibit 116.

118. A true and correct copy of FB-01365361 - FB-01365375 [REDACTED]

[REDACTED]

1 [REDACTED] is attached
2 hereto as Exhibit 117.

3 119. A true and correct copy of FB-01355841- FB-01355842 [REDACTED]
4 [REDACTED]
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8 [REDACTED] is attached hereto as Exhibit 118.

9 120. A true and correct copy of FB-01364897 - FB-01364900 [REDACTED]
10 [REDACTED]
11 [REDACTED]
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14 [REDACTED]
15 [REDACTED]

16 [REDACTED] is attached hereto as Exhibit 119.

17 121. A true and correct copy of FB-01364161 [REDACTED]
18 [REDACTED]
19 [REDACTED]

20 [REDACTED] is attached hereto as Exhibit 120.

21 122. A true and correct copy of FB-01353339 - FB-01353340 [REDACTED]
22 [REDACTED]

23 [REDACTED] is
24 attached hereto as Exhibit 121.

25 123. A true and correct copy of FB-01193401 [REDACTED]
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[REDACTED]

[REDACTED] is attached hereto as Exhibit 122.

124. A true and correct copy of FB-00517457 [REDACTED]

[REDACTED]

[REDACTED] is

attached hereto as Exhibit 123.

125. A true and correct copy of FB-01352766 - FB-01352768 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (FB-01352766)) is attached hereto as Exhibit 124.

126. A true and correct copy of FB-00921983 - FB-00921984 [REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED] is attached hereto as Exhibit 125.

127. A true and correct copy of FB-00422927 - FB-00422928 [REDACTED]

[REDACTED]

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[REDACTED] is attached hereto as Exhibit 126.

1 128. A true and correct copy of FB-00556670 - FB-00556672 [REDACTED]
2 [REDACTED]
3 [REDACTED]
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5 [REDACTED]
6 [REDACTED]
7 [REDACTED] (FB-00556671)) is attached hereto as Exhibit 127.

8 129. A true and correct copy of FB-00454708 - FB-00454714 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED] is attached hereto as Exhibit 128.

13 130. A true and correct copy of FB-00058030 - FB-00058033 [REDACTED]
14 [REDACTED]
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24 [REDACTED]
25 [REDACTED] is attached hereto as Exhibit 129.

26 131. A true and correct copy of FB-00434425 - FB-00434431 [REDACTED]
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28 [REDACTED]

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[REDACTED]

[REDACTED] (FB-00434427 - FB-00434428)) is attached hereto as Exhibit 130.

132. A true and correct copy of FB-00854672 - FB-00854673 [REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED] is attached hereto as Exhibit 131.

133. A true and correct copy of FB-0000075 - FB-0000096 [REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] FB-0000078)) is attached hereto as Exhibit 132.

134. A true and correct copy of FB-00429152 - FB-00429169 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (FB-00429159)) is attached hereto as Exhibit 133.

135. A true and correct copy of FB-00433791 - FB-00433799 [REDACTED]

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[REDACTED]

[REDACTED] (FB-00433793)) is attached hereto as Exhibit 134.

136. A true and correct copy of FB-01391357 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] is attached hereto as Exhibit

135.

137. A true and correct copy of FB-01353100 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] is attached hereto as Exhibit 136.

138. A true and correct copy of FB-01373066 - FB-01373073 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] is attached hereto as Exhibit

137.

139. A true and correct copy of FB-00089734 - FB-00089742 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]
[REDACTED] (FB-00089740)) is attached hereto as
Exhibit 138.

140. A true and correct copy of FB-00061671 - FB-00061674 [REDACTED]
[REDACTED]

[REDACTED] (FB-00061674)) is attached hereto as Exhibit 139.

141. A true and correct copy of FB-00417662 - FB-00417673 [REDACTED]
[REDACTED]

[REDACTED] (FB-00417670)) is attached
hereto as Exhibit 140.

142. A true and correct copy of FB-01335815 - FB-01335822 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] (FB-
01335815 - FB-01335819)) is attached hereto as Exhibit 141.

143. A true and correct copy of FB-01370694 - FB-01370701 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED] (FB-
4 01370695 - FB-01370700)) is attached hereto as Exhibit 142.
5

6 144. A true and correct copy of FB-01368044 - FB-01368045 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED] is attached
12 hereto as Exhibit 143.
13

14 145. A true and correct copy of FB-01354549 - FB-01354571 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED] is attached hereto as Exhibit 144.
21

22 146. A true and correct copy of FB-0000017 - FB-0000026 [REDACTED]
23 [REDACTED] is attached hereto as Exhibit 145.
24

25 147. A true and correct copy of the relevant portions of FB-00046731 [REDACTED]
26 [REDACTED] is
27 attached hereto as Exhibit 146.
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148. A true and correct copy of the relevant portions of FB-00047811 [REDACTED]
[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED] is attached hereto as Exhibit

147.

149. A true and correct copy of the relevant portions of FB-00051800 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] is attached hereto as Exhibit

148.

150. A true and correct copy of FB-01251951 - FB-01251953 [REDACTED]

[REDACTED]

[REDACTED] is attached hereto as Exhibit 149.

151. A true and correct copy of FB-00605188 - FB-00605190 [REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

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[REDACTED]

[REDACTED] is attached hereto as Exhibit 150.

152. True and correct copies of FB-01235610 [REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED] are attached hereto

as Exhibit 151 and Exhibit 152.

153. A true and correct copy of FB-00600167 - FB-00600169 [REDACTED]

[REDACTED]

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[REDACTED]

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is attached hereto as Exhibit 153.

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154. A true and correct copy of FB-00454582 - FB-00454584

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is attached hereto as Exhibit 154.

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1 155. A true and correct copy of FB-00494207 - FB-00494213 [REDACTED]
2 [REDACTED]
3 [REDACTED]
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24 [REDACTED]

25 [REDACTED] is attached hereto as Exhibit 155.

26 156. A true and correct copy of FB-00552036 [REDACTED]
27 [REDACTED]
28 [REDACTED]

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[REDACTED]

[REDACTED] is attached hereto as Exhibit 156.

157. A true and correct copy of FB-00552033 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] is attached hereto as Exhibit

157.

158. A true and correct copy of FB-01368843 - FB-01368856 [REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] is attached hereto as Exhibit 158.

159. A true and correct copy of FB-01368452 - FB-01368453 [REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED] is attached hereto as
Exhibit 159.

160. A true and correct copy of FB-00534487 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] is attached hereto as Exhibit 160.

161. A true and correct copy of FB-00430057 - FB-00430063 [REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED] is attached hereto as Exhibit 161.

162. A true and correct copy of FB-00510070 - FB-00510071 [REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] is attached

hereto as Exhibit 162.

163. A true and correct copy of FB-00510419 - FB-00510420 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] is attached hereto as Exhibit 163.

164. A true and correct copy of FB-00899163 - FB-00899168 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED] is attached hereto as Exhibit 166.

167. A true and correct copy of FB-00926250 - FB-00926257 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] is attached hereto as

Exhibit 167.

168. A true and correct copy of FB-00948130 - FB-00948136 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED] is attached
8 hereto as Exhibit 168.

9 169. A true and correct copy of FB-00968688 - FB-00968701 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED] is attached hereto as Exhibit 169.

15 170. A true and correct copy of FB-01156203 - FB-01156204 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED] is
20 attached hereto as Exhibit 170.

21 171. A true and correct copy of FB-01156760 - FB-01156764 [REDACTED]

22 [REDACTED]

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25 [REDACTED] is attached hereto as
26 Exhibit 171.

27 172. A true and correct copy of FB-01188663 [REDACTED]

28 [REDACTED]

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[REDACTED]
[REDACTED] is

attached hereto as Exhibit 172.

173. A true and correct copy of FB-01221432 - FB-01221433 [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] is attached hereto as Exhibit 173.

174. A true and correct copy of FB-01252038 - FB-01252039 [REDACTED]

[REDACTED]
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[REDACTED]

1 [REDACTED] is
2 attached hereto as Exhibit 174.

3 175. A true and correct copy of FB-00947595 - FB-00947606 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED] is attached hereto as Exhibit
10 175.

11 176. A true and correct copy of FB-01151043 - FB-01151044 [REDACTED]
12 [REDACTED]
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15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 is attached hereto as Exhibit 176.

22 177. A true and correct copy of FB-00947652 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED] is attached hereto as Exhibit 177.

27 178. A true and correct copy of FB-00433723 - FB-00433728 [REDACTED]
28 [REDACTED]

1 [REDACTED]
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3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 is attached hereto as Exhibit 178.

8 179. A true and correct copy of FB-00109950 - FB-00109957 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED] (FB-
14 00109952)) is attached hereto as Exhibit 179.

15 180. A true and correct copy of FB-00089881 - FB-00089884 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED] is attached hereto as Exhibit 180.

21 181. A true and correct copy of Exhibit 9 to the testimony of Facebook's PMQ, Allison
22 Hendrix (a document published by Facebook in 2007 entitled "f8 Event and Facebook Platform
23 FAQ") is attached hereto as Exhibit 181.
24

25 182. A true and correct copy of FB-01351861 - FB-01351866 [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]

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[REDACTED]

[REDACTED] is attached hereto as Exhibit 182.

183. A true and correct copy of FB-01352632 - FB-01352642 [REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] is attached hereto as Exhibit 183.

184. A true and correct copy of FB-01366934 - FB-01366948 [REDACTED]

[REDACTED]

[REDACTED] is attached

hereto as Exhibit 184.

185. A true and correct copy of FB-00889856 - FB-00889861 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] is attached hereto as Exhibit 185.

186. A true and correct copy of FB-01217108 - FB-01217112 [REDACTED]

[REDACTED]

[REDACTED] is attached hereto as Exhibit 186.

1 187. A true and correct copy of FB-01353037 - FB-01353039 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
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6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED] is attached hereto as Exhibit 187.

11 188. A true and correct copy of FB-00080931 - FB-00080943 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED] (FB-00080939)) is attached
16 hereto as Exhibit 188.

17 189. A true and correct copy of FB-01363061 - FB-01363113 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED] is
23 attached hereto as Exhibit 189.

24 190. A true and correct copy of FB-01363526 – FB-01363535 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]

1 [REDACTED]
2 [REDACTED] is
3 attached hereto as Exhibit 190.

4 191. A true and correct copy of FB-01369295 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED] is attached hereto as Exhibit 191.

10 192. A true and correct copy of FB-01373074 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED] is attached hereto as Exhibit 192.

15 193. A true and correct copy of FB-01389969 [REDACTED]
16 [REDACTED]
17 [REDACTED]
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22 [REDACTED]
23 [REDACTED]
24 [REDACTED] is
25 attached hereto as Exhibit 193.

26 194. A true and correct copy of FB-00454612 - FB-00454614 [REDACTED]
27 [REDACTED]
28 [REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED] is attached hereto as Exhibit 194.

195. A true and correct copy of FB-00580073 - FB-00580074 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] is

attached hereto as Exhibit 195.

196. A true and correct copy of FB-00574447 - FB-00574448 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED] is attached hereto as

Exhibit 196.

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197. A true and correct copy of FB-01215116 - FB-01215118 [REDACTED]

[REDACTED]

is attached hereto as Exhibit 197.

198. A true and correct copy of FB-00194154 - FB-00194155 [REDACTED]

[REDACTED]

[REDACTED] is attached hereto as Exhibit 198.

199. A true and correct copy of FB-01193711 [REDACTED]

[REDACTED]

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[REDACTED] is attached hereto as Exhibit 199.

200. A true and correct copy of FB-00043600 [REDACTED]

[REDACTED]
[REDACTED]

[REDACTED] is attached hereto as Exhibit 200.

201. A true and correct copy of FB-01217135 - FB-01217135 [REDACTED]

[REDACTED]

[REDACTED] is attached hereto as

Exhibit 201.

202. A true and correct copy of FB-00477297 - FB-00477299 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] is

attached hereto as Exhibit 202.

203. A true and correct copy of FB-00483662 - FB-00483665 [REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] is attached hereto as Exhibit 203.

204. A true and correct copy of FB-00569937 - FB-00569938 [REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED] is attached hereto as Exhibit 204.

205. A true and correct copy of FB-00190690 - FB-00190692 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] is attached hereto as Exhibit 205.

206. A true and correct copy of FB-00189010 - FB-00189020 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] is attached hereto as Exhibit

206.

1 207. A true and correct copy of FB-00026998 - FB-00027002 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED] is attached hereto as Exhibit 207.

7 208. A true and correct copy of FB-00025985 - FB-00025992 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
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14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED] is attached hereto as Exhibit 208.

19 209. A true and correct copy of FB-00025853 - FB-00025857 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED] is attached hereto as Exhibit 209.

25 210. A true and correct copy of FB-00025847 - FB-00025848 [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] is attached hereto as Exhibit 210.

211. A true and correct copy of FB-00026028 - FB-00026036 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (FB-00026034 - FB-00026036)) is attached hereto
as Exhibit 211.

212. A true and correct copy of FB-01312032 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED] (FB-01312063)) is attached hereto as Exhibit 212.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 17, 2018 in Boston, Massachusetts.

/s/ David S. Godkin

David S. Godkin, Esq.

1 **PROOF OF SERVICE**

2 I, Cheryl A. McDuffee, declare:

3 I am a citizen of the United States and employed in Suffolk County, Massachusetts. I am
4 over the age of eighteen years and not a party to the within-entitled action. My business address is
5 280 Summer Street, Boston, MA 02210. On May 17, 2018, I served a copy of the within
6 document(s):

7 **DECLARATION OF DAVID S. GODKIN IN OPPOSITION TO DEFENDANTS'**
8 **SPECIAL MOTIONS TO STRIKE (ANTI-SLAPP)**

9 ☒ by electronic service, per the agreement of the parties, by emailing a true and
10 correct copy through counsel's email address to Defendant's counsel of record at
the email addresses set forth below.

11 Joshua H. Lerner (jlerner@durietangri.com)
12 Sonal N. Mehta (smehta@durietangri.com)
13 Laura Miller (lmiller@durietangri.com)
14 Catherine Kim (ckim@durietangri.com)
15 Durie Tangri (service-six4three@durietangri.com)
217 Leidesdorff Street
16 San Francisco, CA 94111
P (415) 376 - 6427
17 Attorney for Defendant
FACEBOOK, INC.

18 and

19 Judge V. Raymond Swope (By hand)
20 Department 23
Complex Civil Litigation

21 I declare under penalty of perjury under the laws of the State of California that the above is
22 true and correct.

23 Executed May 17, 2018, at Boston, Massachusetts.

24
25 /s/ Cheryl A. McDuffee
26 Cheryl A. McDuffee
27
28

EXHIBIT 1

REDACTED FOR PUBLIC FILING

EXHIBIT 2

PORTIONS REDACTED FOR PUBLIC FILING

1 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 IN AND FOR THE COUNTY OF SAN MATEO

3

4 SIX4THREE, LLC, a Delaware
5 limited liability company,

6

Plaintiff,

7

vs.

No. CIV 533328

8 FACEBOOK, INC., a Delaware
9 corporation; and DOES 1
10 through 50, inclusive,

11

Defendants.

12 _____/

13

14

15

16

DEPOSITION OF ALI PARTOVI

17

October 10, 2017

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Reported by:
Natalie Y. Botelho
25 CSR No. 9897

1 look at Exhibit 3.

2 MR. LERNER: And just to be clear, you
3 want this to be both Exhibit 7 to Hendrix and
4 Exhibit 3 to this deposition?

5 MR. GODKIN: Yes. I mean...

6 MR. LERNER: All right.

7 MR. GODKIN: It's not the first time --

8 MR. LERNER: It's your record. I
9 understand.

10 MR. GODKIN: Yeah.

11 (Pause.)

12 MR. GODKIN: Q. Have you had a moment to
13 review Exhibit 3?

14 (Pause.)

15 THE WITNESS: Yeah.

16 MR. GODKIN: Q. If you look at the bottom
17 of the first page of Exhibit 3, you see a URL which
18 is facebook.com, then some additional information?

19 A. Yeah.

20 Q. Do you recall ever reading this on
21 Facebook's website?

22 A. I can't say exactly whether I recall
23 reading this. However, there's nothing here that I
24 haven't -- that looks unfamiliar to me. I feel like
25 I've seen this information in some form before.

1 Q. Did you from time to time go to Facebook's
2 website and read what was posted on the website?

3 A. Yes.

4 Q. And do you recall going to the website
5 from time to time to read announcements made by
6 Facebook about its platform?

7 MR. LERNER: Vague and overbroad.

8 THE WITNESS: Yes.

9 MR. GODKIN: Q. If you focus for a moment
10 on the second paragraph of Exhibit 3, do you see
11 that there's a statement differentiating between
12 applications people use on Facebook and the core of
13 the site? Do you see that?

14 A. Yes.

15 Q. And then it goes on to say, "Applications
16 are things like Photos, Notes, Groups and Events"?

17 A. Yes.

18 Q. Do you see that? Do you recall coming to
19 any understanding about what Facebook meant when it
20 was differentiating between applications and the
21 core of its website?

22 MR. LERNER: Calls for speculation.

23 THE WITNESS: Well, yes. Between this,
24 what you just pointed out, but also the language in
25 the fourth paragraph says it more overtly, where it

1 says, "we've made it so that any developer can build
2 the same applications that we can." What I
3 understood that to mean was that Facebook's own
4 features would -- would be built as applications
5 using the same platform and using the same APIs that
6 third-party applications would.

7 And there was a example unveiled at the F8
8 event, which was the Video application, and that's
9 in the last paragraph of this -- of this document.
10 That was sort of a symbolic example where Facebook
11 was unveiling a significant new feature, and it was
12 unveiled in the form of an application that had --
13 had no inherent advantages over third-party
14 applications --

15 MR. GODKIN: Q. What --

16 A. -- on the platform.

17 Q. Was that concept important to your
18 company, iLike, the concept that Facebook would be
19 building applications using the same tools and would
20 have no inherent advantages over third-party
21 applications?

22 MR. LERNER: Leading, compound, and lacks
23 foundation.

24 THE WITNESS: That was very important to
25 us.

1 MR. GODKIN: Q. Why was that very
2 important to you?

3 A. Because it suggested that there would be a
4 level playing field where a third party could
5 compete not only with other third parties, but even
6 with Facebook's own capabilities, and could
7 accumulate customers based on merit and not based
8 on, you know, special advantages within the --
9 within Facebook.

10 Q. Was that concept something you and your
11 company were aware of back in April, when you
12 decided to go ahead and build an app on the Facebook
13 Platform?

14 MR. LERNER: Overbroad, calls for
15 speculation.

16 THE WITNESS: I don't think I was. I
17 wasn't. I don't know if others within the company
18 were.

19 MR. GODKIN: Q. Did you become aware of
20 that at the F8 in May of 2007?

21 MR. LERNER: Overbroad.

22 THE WITNESS: Yes.

23 MR. GODKIN: Q. And the Face -- was
24 Facebook's demonstration of its new Video app an
25 illustration of that concept?

1 MR. LERNER: Same objection.

2 THE WITNESS: It was.

3 MR. GODKIN: Q. Was it your understanding
4 that Facebook was using its new Video app in order
5 to communicate to third-party developers that there
6 would be a level playing field out there?

7 MR. LERNER: Calls for speculation, it's
8 overbroad, and it's leading.

9 THE WITNESS: That was my understanding.

10 MR. GODKIN: Q. And that was important to
11 you why?

12 MR. LERNER: Misstates the testimony.

13 THE WITNESS: I've already answered that.

14 MR. GODKIN: Q. Okay. I'll withdraw
15 that, then. Do you see in the third paragraph the
16 term "social graph" is used?

17 A. Yes.

18 Q. Did you have an understanding of what
19 Facebook meant when it referred to the social graph?

20 A. Yes.

21 Q. What was your understanding?

22 MR. LERNER: Calls for speculation.

23 THE WITNESS: A graph is a computer
24 science term, where you have nodes, which you could
25 think of as dots, and then you have connections

1 between the nodes, which you can think of as lines
2 connecting them. And the social graph meant the
3 interconnections between people, where each person,
4 each human, is a node, and each friendship is a line
5 connecting two nodes or two people.

6 MR. GODKIN: Q. And in the fourth
7 paragraph, do you see there's a reference to
8 "written FQL," and then in parentheses it says
9 "Facebook Query Language"? Do you see that?

10 A. Yes.

11 Q. Do you know what that means?

12 MR. LERNER: Same objection.

13 THE WITNESS: Broadly. There were two new
14 languages, FQL and FBML, which is Facebook Markup
15 Language -- sorry -- Facebook Markup Language. And
16 these were -- essentially these were both extremely
17 similar to existing standard languages, but modified
18 to enable specific Facebook capabilities. And FQL
19 provided abilities for the -- for an application to
20 get information from Facebook. So as part of the
21 APIs that I mentioned before.

22 So as an example, if an app wanted to find
23 out what are the favorite music of a consumer, they
24 could submit an FQL query using the Facebook Query
25 Language to look up that consumer's favorite music.

1 MR. GODKIN: Q. And when you're using the
2 term "language," are you talking about a computer
3 programming language?

4 A. Sorry. Yes.

5 Q. Okay. All right. Put that one aside.

6 Let me ask the court reporter to mark as
7 the next exhibit another document.

8 (Whereupon Exhibit 4 was marked for
9 identification.)

10 MR. GODKIN: Q. I've placed in front of
11 you what we've marked as Exhibit 4, Mr. Partovi. If
12 you could take a moment to review it.

13 A. Mm-hmm.

14 Q. It's entitled "F8 Event and Facebook
15 Platform FAQ" at the top. Do you see that?

16 A. Mm-hmm.

17 Q. You need to say "yes" or "no."

18 A. Yes.

19 Q. Have you seen this document before?

20 A. This does not look familiar to me.

21 Q. Do you see in the very first paragraph,
22 under the heading "What is F8," and then it says,
23 "F8 was an event held at the San Francisco Design
24 Center on May 24th --

25 A. Yes.

1 Q. -- 2007, during which Mark Zuckerberg
2 unveiled the next evolution of Facebook Platform."
3 And it talks about a Hackathon, as well.

4 A. Yeah.

5 Q. Does this refresh your recollection that
6 the F8 in 2007 took place on May 24, 2007 --

7 A. Yes.

8 Q. -- at the San Francisco Design Center?

9 MR. LERNER: Asked and answered. He's
10 already testified this document's not familiar.

11 THE WITNESS: So on the third paragraph, I
12 might have seen this, because this is the --
13 "opportunity to build a business" at the end is a
14 thing that I remember pointing out to you
15 specifically was important to me.

16 MR. GODKIN: Q. All right. And so you're
17 referring to the third paragraph that's entitled
18 "What is Facebook Platform," correct?

19 A. Yes.

20 Q. And in that paragraph, it also refers
21 to -- this is in the last sentence -- "deep
22 integration into the Facebook website."

23 A. Yes.

24 Q. Does that refresh your recollection as to
25 whether you read this document before?

1 A. That one, not as much. "Opportunity to
2 build a business" is something that I remember
3 reading. And I think I remember Mark Zuckerberg
4 saying it on stage, as well. And it wasn't in this
5 document, so therefore, maybe I read it here.

6 Q. When you say "it wasn't in this document,"
7 are you referring --

8 A. It wasn't in Exhibit 3.

9 Q. Exhibit 3. Okay. And if you refer down
10 to -- down towards the bottom of the first page,
11 there's a section called "Why did Facebook launch
12 Facebook Platform?" Do you see that?

13 A. Yeah.

14 Q. And it says, "Our engineers have created
15 great applications for Facebook, but we recognize
16 that third-party developers can help us make
17 Facebook an even more powerful social utility." Do
18 you see that?

19 A. Yeah.

20 Q. Does reading that refresh your
21 recollection as to whether or not you heard
22 Mr. Zuckerberg or someone else talk about
23 third-party developers making Facebook a more
24 powerful social utility?

25 MR. LERNER: Asked and answered, and

1 mischaracterizes the testimony.

2 THE WITNESS: The term "more powerful
3 social utility" doesn't ring a bell.

4 MR. GODKIN: Q. Okay. And then the last
5 sentence of this paragraph states, "Developers also
6 benefit from Facebook Platform as it gives them the
7 potential to broadly distribute their applications
8 and even build new business opportunities." Do you
9 see that?

10 A. Yes.

11 Q. Does that refresh your recollection as to
12 whether you recall Mr. Zuckerberg or someone else
13 talking about Facebook Platform and providing new
14 business opportunities to developers?

15 MR. LERNER: Same objections, and
16 mischaracterizes the prior testimony.

17 THE WITNESS: That language I definitely
18 recall hearing from Facebook, but I don't recall
19 whether it was in this document or from Zuckerberg
20 on stage or various other Facebook communications.
21 But to broadly distribute applications and build new
22 business and opportunities were definitely things
23 that Facebook in multiple different ways was touting
24 as the benefits of the platform for developers.

25 MR. GODKIN: Q. And was that one of the

1 things that you considered in deciding to go ahead
2 and build an application on the Facebook Platform?

3 MR. LERNER: Asked and answered, and it's
4 vague as to time.

5 THE WITNESS: I think we saw that as
6 marketing. The things I said earlier were more
7 critical to us, namely the ability to communicate
8 with customers and build lasting customer
9 relationships.

10 MR. GODKIN: Q. Then if you turn to the
11 third page of Exhibit 4, at the top there's a
12 section entitled "How will Facebook deal with
13 applications that compete with one another or even
14 compete with Facebook-built applications?" Can you
15 read that section quickly.

16 (Pause.)

17 THE WITNESS: Yeah.

18 MR. GODKIN: Q. Do you recall reading
19 this paragraph before?

20 MR. LERNER: Asked and answered.

21 THE WITNESS: I don't recall reading it in
22 this document, but I recall it being an explicit
23 promise from Facebook that applications from
24 third-party developers would have a level playing
25 field with applications built by Facebook, and that

1 third-party applications and Facebook's native
2 applications would compete for consumer attention
3 based on merit. Those are things I said, you know,
4 ten minutes earlier.

5 MR. GODKIN: Q. Right.

6 A. So I recall those things being explicit
7 promises, but I don't recall whether I saw them in
8 this document itself.

9 Q. Do you recall whether Mr. Zuckerberg made
10 that point when he gave his speech at the F8 in
11 2007?

12 MR. LERNER: Asked and answered --

13 THE WITNESS: I don't remember that.

14 MR. LERNER: -- for about the tenth time.

15 MR. GODKIN: Q. Did anybody else other
16 than Mr. Zuckerberg make speeches at the F8?

17 MR. LERNER: That's --

18 MR. GODKIN: Q. -- in 2007?

19 MR. LERNER: -- also asked and answered
20 multiple times.

21 THE WITNESS: I don't remember. I think I
22 said "probably."

23 MR. GODKIN: Q. Right.

24 A. It's just very hazy.

25 Q. Well, to the extent that it's possible

1 And I believe Facebook themselves was amongst the
2 different groups that we borrowed machines from.
3 Although I wasn't the one doing that, so my memory
4 of that is a bit hazy.

5 Q. How many -- do you recall how many users
6 of the Facebook app iLike had at its peak?

7 MR. LERNER: Vague and overbroad.

8 THE WITNESS: It's an estimate. I would
9 say 25 million, but that could be significantly off.
10 It could be -- it could be 20 or it could be 30.

11 MR. GODKIN: Q. Somewhere between 20 and
12 30?

13 A. It was in the tens of millions.

14 Q. And do you recall approximately when the
15 peak was achieved time-wise?

16 A. 2009.

17 Q. So at the bottom of page -- you see
18 there's some page numbers, page 3 of 14, at the
19 bottom?

20 A. Yeah.

21 Q. On page 3 of 14, you answered a question
22 by stating that you pushed and pushed with Facebook
23 asking for some sort of exclusive relationship. Do
24 you see that?

25 A. Yeah.

1 Q. And what was the -- what sort of exclusive
2 relationship were you pushing for?

3 A. So we had hoped to have a partnership with
4 Facebook where we'd have a contractual commercial
5 relationship with them. And, you know -- and one
6 where we would be the exclusive provider of music,
7 music-related features on Facebook.

8 Q. And what did Facebook respond?

9 A. I mean, this is what I remember, is they
10 weren't interested in doing any exclusive -- or
11 even -- or contractual relationship, and -- and
12 instead wanted us to build -- build an app on the
13 platform.

14 Q. And at the top, on page 4 of 14, you
15 answered the question by saying that, "They
16 repeatedly said they won't do an exclusive
17 relationship, but would rather create a level
18 playing field where we could compete with other
19 third parties." Do you see that?

20 A. Yeah.

21 Q. And by "they," do you recall any
22 individual people who you were talking to Facebook
23 about this potential exclusive relationship?

24 A. I was speaking to Allison Rosenthal.

25 Q. Do you know what her job was within

1 Facebook?

2 A. I don't remember the title, but it was
3 business development. Maybe director of business
4 development or manager of business development. I
5 believe she had a specific focus on music, music
6 services or the music category, but I don't remember
7 for sure.

8 Q. Do you happen to know whether she still
9 works for Facebook?

10 A. I don't think she does.

11 Q. Is she somebody that you've stayed in
12 touch with over the years?

13 A. Minimally.

14 Q. Do you happen to know where she works
15 today?

16 A. I should, but I've forgotten.

17 Q. And the phrase "level playing field"
18 appears in that sentence, as well. Is that
19 something that Allison Rosenthal said to you?

20 A. I don't recall.

21 Q. Do you remember anybody else at Facebook
22 using the phrase "level playing field"?

23 A. Matt Cohler.

24 Q. Can you spell his last name?

25 A. C-O-H-L-E-R.

1 Q. What was his title at the time he had that
2 conversation with you?

3 A. I think chief product officer, but I
4 might -- I might be mistaken on that, as well.

5 Q. And do you recall how many times you spoke
6 with Matt Cohler about this topic of a level playing
7 field?

8 A. I --

9 MR. LERNER: Mischaracterizes the
10 testimony.

11 THE WITNESS: The only conversation that I
12 remember clearly was at F8, at the F8 conference. I
13 remember him saying that the Video app that Facebook
14 had built using their own platform was -- was not
15 just a one-off. It was that -- it was indicated
16 that henceforth Facebook's new capabilities and
17 features would be built on the platform using the
18 same -- you know, on the same level playing field as
19 third-party apps.

20 So, for example, I remember him suggesting
21 that if a third party built a better video app than
22 Facebook's own Video app, the third party could
23 conceivably have -- reach more consumers than
24 Facebook's own Video app.

25 MR. GODKIN: Q. Was what -- was this a

1 speech that he was making in front of the group?

2 A. No. This was a one-on-one conversation.

3 Q. With you?

4 A. Yes.

5 Q. With anybody else besides the two of you,
6 Mr. Cohler and yourself?

7 A. I think my brother, Hadi, was there, but I
8 don't remember for sure.

9 Q. Did Mr. Cohler -- do you recall, was he
10 involved in making a presentation to the F8 on the
11 subject of this Video app Facebook had built?

12 A. I don't remember.

13 Q. All right. Other than Mr. Cohler and
14 Allison Rosenthal, do you recall anybody else from
15 Facebook talking with you about this concept of a
16 level playing field?

17 MR. LERNER: Mischaracterizes the
18 testimony.

19 THE WITNESS: I don't. Sorry. This fell
20 off. I don't.

21 MR. GODKIN: Q. So at the bottom of
22 page -- on page 4 of 14, the interview asks you,
23 "What made iLike think that Facebook Platform would
24 be a big deal?" Do you see that?

25 A. Yes.

1 and efficiencies and capabilities that it -- that it
2 offered to developers, would be superior to ordinary
3 web development, would be the preferred place for
4 people to build websites and services rather than
5 just on the open web.

6 Q. Okay. And then on the page 12 of 14, at
7 the bottom of the page, you respond to the question
8 by stating, "What I'd say is that anybody who is
9 currently involved in building a consumer-facing
10 website should be thinking about whether they should
11 be building a Facebook app instead." Why did you
12 think that?

13 A. I don't see it. This is on page 12?

14 Q. At the very bottom of the page.

15 A. Ah.

16 Q. You're asked a question, and then you
17 respond --

18 A. Right.

19 Q. -- "what I'd say." Do you see that?

20 A. Yes.

21 Q. So why did you make that statement?

22 A. Because I believed that the -- all the
23 benefits that one could have of building a website
24 could be enjoyed within a Facebook app, and plus
25 additional benefits that were not available for a

1 stand-alone website, such as access to the various
2 APIs that Facebook provided and access to the social
3 graph.

4 Q. And so do I understand correctly that you
5 were basically saying you thought, given these
6 additional features, the Facebook Platform was a
7 better place to build a website than an ordinary
8 website, correct?

9 MR. LERNER: Leading, mischaracterizes the
10 testimony.

11 THE WITNESS: I -- I remember thinking it
12 was a better place to build a service or to build a
13 business than on a stand-alone website.

14 MR. GODKIN: Q. In addition to the
15 Facebook Platform, are you aware of any -- anything
16 else that Facebook did in the 2007 to 2009 time
17 frame that encouraged third-party app developers to
18 build businesses on Facebook?

19 MR. LERNER: Overbroad, calls for
20 speculation.

21 THE WITNESS: Am I aware of anything else
22 Facebook did that encouraged -- I mean, in addition
23 to Facebook Platform, a lot of things that they did,
24 I would say, fall under the umbrella of the term
25 "Facebook Platform," but in case you don't count it

1 under that, there was a different set of APIs called
2 Facebook Connect, which I can't remember whether it
3 officially was considered part of Facebook Platform
4 or separate, but these were capabilities for apps
5 that -- sorry -- for websites that were not housed
6 within Facebook, nevertheless to have access to some
7 of the same services and data and comparable APIs as
8 if -- compared to apps that were housed within
9 Facebook.

10 And so essentially the benefits of
11 building an app entirely within Facebook, some of
12 those benefits were now offered to websites that
13 were not housed within Facebook, but could connect
14 to Facebook from the outside, so to speak.

15 MR. GODKIN: Q. Did iLike take advantage
16 of Facebook Connect on the iLike website portion of
17 its business?

18 A. No, we did not.

19 Q. Are you aware of any other companies that
20 you were involved with or consulting with at the
21 time who took advantage of Facebook Connect?

22 A. I don't remember specifically.

23 Q. Are you familiar with something called
24 Facebook Fund?

25 A. Ah, yes.

EXHIBIT 2

PAGES 99 - 121 REDACTED FOR
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1 changes that Facebook was making?

2 A. Yes.

3 Q. How?

4 A. So the biggest factor is that it -- they
5 significantly impeded our ability to retain or
6 attract employees. So our staff collectively was
7 either quitting or threatening to quit, and it was
8 very difficult for us to recruit any new staff.

9 But also, the products that we sold were
10 disappearing. So one of our means for revenue would
11 be to approach a touring artist, such as, to use
12 your example, Tom Petty, although specifically, I
13 mean, actual examples were U2, Coldplay, other major
14 artists. And we would offer to promote their
15 concert more aggressively than what we already did
16 in return for cash.

17 So our app for free would notify all U2
18 fans within a five-mile radius that "There is a U2
19 concert coming up near you in the next two months."
20 But if U2 would pay us extra money, we would notify
21 all fans in a 20-mile radius or 50-mile radius to
22 reach a larger audience of, you know, prospective
23 concert ticket buyers. And in return for cash, we
24 would send those notifications to those fans.

25 Our ability to do that and to collect that

1 money required us to have an ability to notify these
2 fans, and these fans, who were our users of our app,
3 we did have that ability to notify them until that
4 ability was deprecated and we lost that ability to
5 notify those fans. And so we lost the ability to do
6 the thing that paying customers were paying us to
7 do.

8 So our business forecasts had to be
9 slashed because one of our most lucrative sources of
10 revenue disappeared. So that impacted the
11 valuation.

12 Q. Was the Facebook application -- strike
13 that.

14 Was iLike's Facebook app still functioning
15 at the time the company was sold to MySpace?

16 A. It was, yes.

17 Q. And you stayed with MySpace for a period
18 of time?

19 A. Yes.

20 Q. What was your job at MySpace?

21 A. I became VP of business development at
22 MySpace.

23 Q. And how long did you stay at MySpace?

24 A. Full-time, about six months, maybe seven
25 months, and then I remained as a consultant maybe

1 clear, the -- I have the protective order that's in
2 place in the case, and I believe it -- hang on. Let
3 me just check.

4 MR. LERNER: We can go off the record to
5 do this.

6 MR. GODKIN: It will just take me a
7 second.

8 MR. LERNER: Let's go off the record so we
9 can cover this.

10 MR. GODKIN: All right.

11 MR. LERNER: You need to agree.

12 MR. GODKIN: No, I think you're right. So
13 I'm agreeing with you.

14 THE VIDEOGRAPHER: Off the record at
15 12:35.

16 (Discussion off the record.)

17 THE VIDEOGRAPHER: Back on the record at
18 12:35.

19 MR. GODKIN: Q. Mr. Partovi, do you know,
20 or to your knowledge, did Facebook ever make a
21 public announcement that third-party apps would not
22 be on a level playing field with Facebook apps?

23 MR. LERNER: Vague and overbroad.

24 THE WITNESS: Certainly not in 2007. Did
25 they sometime later than that do so? Nothing comes

1 to mind. What I would say is that when they
2 announced this so-called Great Apps program, which I
3 think might have been mid 2008, it inherently
4 implied it's not a level playing field because there
5 are Great Apps and then there are other apps, and
6 that the Great Apps are somehow superior -- you
7 know, given benefits not available to the rest.

8 So that public announcement, at least in
9 between, you know, apps, suggested that the playing
10 field was not level. I don't think there was any
11 explicit statement saying that Facebook's own core
12 features would be even a higher level of capability,
13 although it was -- by then it was already, you know,
14 in practice and kind of obvious.

15 MR. GODKIN: Q. Did you ever -- strike
16 that.

17 I think you testified earlier this morning
18 about some conversations you had with at least one
19 person who was in corporate development for
20 Facebook, and I can't remember the name of the
21 person. Do you remember what you told me? Or I can
22 look at my notes.

23 A. Dan Rose was in corporate development. I
24 don't remember if Allison Rosenthal was. Allison
25 Rosenthal was in business development, but -- I

1 don't understand -- I don't know what you're asking.

2 Q. Maybe I've used the wrong -- sorry, I
3 might have used the wrong term. I meant to ask, was
4 there somebody that you talked to or met with who
5 was in business development at Facebook?

6 MR. LERNER: Vague and overbroad.

7 THE WITNESS: Allison Rosenthal. And that
8 was in the pre-platform, you know, 2006, early 2007
9 time frame. There were others. Dan Rose was a
10 person that I did not communicate with so much. My
11 brother had more communications with Dan Rose. And
12 I believe he was the -- if I'm not mistaken, head of
13 business development, but I'm not sure his official
14 title. It might have been head of corporate
15 development.

16 MR. GODKIN: Q. And so I'm focusing now
17 on meetings that you personally had --

18 A. Okay.

19 Q. -- with business development people. Can
20 you identify or do you recall any specific meetings
21 that you had with business development people?

22 MR. LERNER: Lacks foundation.

23 THE WITNESS: There were many over the
24 course of the years, but the -- if we're talking now
25 about post F8, after our app had gone through this,

1 you know, period of, you know, success and then
2 having features deprecated, we -- we were trying to
3 sell the company. And I met with a team at Facebook
4 that was led by Ethan Beard, and he was an ex-Google
5 guy. I forget if he was in corporate development or
6 business development, but, you know, he was
7 relatively new at Facebook, if I remember correctly,
8 and we were -- I'm sorry. Take it back. I think
9 that -- I take it back. He was not in corporate
10 development or business development. I think
11 actually he had become the head of the platform
12 team. Forgive me, because it's so long ago, and the
13 titles I don't remember.

14 And I remember another name now. Elliot
15 Schrage, Schrage. Schrage, Schrage. So I think in
16 that sequence I told you before, after Josh Elman
17 came Elliot Schrage, and then Elliot Schrage either
18 moved to a different role or to a higher role, and
19 then Ethan Beard came in maybe under him.

20 So in that earlier succession of people
21 who we interacted with was Elliot and then Ethan.
22 And Ethan, I think, was head of the platform, but we
23 had a conversation with him relating to the
24 possibility of Facebook acquiring the company.

25 MR. GODKIN: Q. Approximately when did

1 that conversation take place?

2 A. I think in 2009.

3 Q. And who attended? Was it a meeting or a
4 telephone call?

5 A. It was a meeting.

6 Q. Who attended the meeting?

7 A. I don't remember the other attendees. It
8 was -- there were more than one people.

9 Q. From --

10 A. Sorry. There were multiple people.

11 Q. From Facebook?

12 A. From Facebook. I think I might have been
13 the only one from iLike.

14 Q. Was the meeting at Facebook's
15 headquarters?

16 A. It was.

17 Q. And tell me everything you can remember
18 about the discussion at that meeting.

19 A. I mean, the most salient thing I remember
20 was that there -- Ethan said at some point, you
21 know -- you know, that, "We," meaning Facebook,
22 "could acquire you, but not for very much." And I
23 remember asking, "Why not for very much?" and him
24 saying, "Because we could just shut you down."

25 And the reason this, you know, has stuck

1 in my memory is because I took it as somewhat of a
2 threat, and I -- I don't know whether he intended it
3 to be conveyed as a threat or just a, you know,
4 passing observation on his part, but I remember
5 immediately notifying other people on my team that
6 now Facebook has articulated this explicit threat.

7 I don't -- it had never been articulated
8 before, that they could -- or that they would
9 consider arbitrarily shutting us down. And, you
10 know, when you're threatened, it only takes once.
11 You don't forget it. So from that point on, we
12 lived under that threat.

13 Q. Who on your team did you communicate what
14 had been said to --

15 A. Definitely my brother, Hadi, and I'm
16 pretty sure Nat Brown.

17 Q. Back in the 2007-'8 time frame, were you
18 familiar with Facebook's privacy settings and
19 controls?

20 A. I was. They've changed so many times that
21 I don't remember right off the top of my head what
22 they were then.

23 Q. Do you recall at that time, 2007-2008,
24 were -- were Facebook users able to control what
25 information was accessible to other Facebook users?

1 MR. LERNER: Overbroad and calls for
2 speculation.

3 THE WITNESS: You know, my recollection of
4 this is hazy, but with that giant disclaimer, what I
5 remember is that at the time that the platform first
6 opened up, meaning the first F8, the controls
7 offered to consumers were not very much, and --
8 some, but not very much.

9 And in particular, what I remember as
10 pertains to our discussion is that third-party apps
11 like ours could, through one user, see the data of
12 that user's friends, as I mentioned earlier, as long
13 as though the one who was our customer himself or
14 herself could see those -- his friends' information.

15 So if our customer's John, and his friend
16 is Mary, if John can see Mary's birthday, then we
17 could also see Mary's birthday, as long as John gave
18 us permission. At some point I think that ability
19 was restricted, but I don't remember when or exactly
20 what the new restriction was.

21 MR. GODKIN: Q. Now, fast-forward to like
22 2014. In 2014, did you have anything -- any
23 knowledge of the Facebook Platform at that time
24 vis-a-vis any of the businesses you invested in or
25 consulted for?

1 conference called F8, right?

2 A. Yeah.

3 Q. And your testimony was that iLike had
4 already taken an investment from all the VC
5 investors at least prior to F8, right?

6 A. Correct. The main investors were Khosla
7 Ventures and a strategic investment from
8 Ticketmaster.

9 Q. And you have testified a little bit today
10 about what you called some promises. And I have a
11 question for you, which is, are you testifying that
12 anyone at Facebook actually promised you that
13 Facebook would only develop its products after F8
14 like other app developers as apps?

15 MR. GODKIN: Objection.

16 THE WITNESS: I don't remember whether the
17 word "promise" was used. I remember it more in the
18 realm of, "We will not do this," or, "We will only
19 do that." So --

20 MR. LERNER: Q. Is it your testimony that
21 anybody even represented to you that Facebook would
22 never develop core products after F8?

23 MR. GODKIN: Objection.

24 THE WITNESS: So the way the FAQ here
25 states jives with what I remember the

1 representations from Facebook executives in person,
2 which was applications from third-party developers
3 would be on a level playing field with applications
4 built by Facebook.

5 MR. LERNER: Q. Do you see anything there
6 about Facebook core products there?

7 MR. GODKIN: Objection.

8 THE WITNESS: So no, not in that FAQ. I
9 remember Matt Cohler representing to me at F8 that
10 Facebook's own new features would be built using the
11 platform.

12 MR. LERNER: Q. And so your testimony is
13 that Mr. Cohler represented to you that from that
14 date forward, all Facebook new features would be
15 built as apps on the platform?

16 A. More or less. You know, when you say
17 "all," if they had made -- you know, if they had
18 made modest changes to the other parts, we would not
19 have been surprised, but dramatic changes, we would
20 have been surprised and we were surprised.

21 Q. Okay. Let's back up. I just -- I want to
22 get to not more or less, but exactly what you claim
23 Mr. Cohler represented to you. Did Mr. Cohler
24 represent to you that from that day forward,
25 Facebook would never develop its own core products

1 Plaintiff's representations in this complaint, you
2 were neither a advisor with an agreement nor
3 yourself initially a shareholder, correct?

4 MR. GODKIN: Objection.

5 THE WITNESS: I was a shareholder at this
6 point.

7 MR. LERNER: Q. Understood. But you only
8 became a shareholder after your brother transferred
9 shares to the entity that you and he share, correct?

10 A. Yes. All of that was prior to 2007,
11 though. I think that was in 2005 or '6.

12 Q. Okay.

13 A. So at the time of this Q and A, I was a
14 shareholder. At the time of F8, I was a
15 shareholder. Whether I was an advisor or not is a
16 semantic. I was -- I was helping my brother help
17 them. He was a formal advisor, and -- you know, and
18 I was informally.

19 Q. Okay.

20 A. You didn't ask, but I'll say that the word
21 "induce" here is not how I would describe my role at
22 all.

23 Q. How would you describe your role?

24 A. So what it says here was that I, as an
25 ally -- you know, in my capacity as an ally of

1 Facebook, was committed to helping them grow their
2 platform and to induce developers to participate.
3 While I was a shareholder of Facebook, my main
4 allegiance was to my own corporation, iLike, and I
5 was committed to helping iLike build its business.
6 To the extent that the platform on its face had
7 benefits that everybody could see, I was touting
8 those benefits, but not with any inducement goal in
9 mind.

10 And, you know, it wasn't -- I would never
11 have described it as saying I was committed to
12 helping them -- helping Facebook grow that operating
13 system or to induce anyone to doing anything. I was
14 committed to helping iLike grow.

15 Q. Indeed. As you testified, you tried to
16 get an exclusive deal, right?

17 A. That's correct. Before the platform
18 launched, yeah.

19 Q. Right.

20 A. Which is, frankly, what any company would
21 do.

22 Q. Right. You understand there were risks in
23 depending on Facebook, correct?

24 A. Did I understand at the time? Yes.

25 Q. And you understood very well by, for

EXHIBIT 3

REDACTED FOR PUBLIC FILING

EXHIBIT 4

REDACTED FOR PUBLIC FILING

EXHIBIT 5

REDACTED FOR PUBLIC FILING

EXHIBIT 6

PORTIONS REDACTED FOR PUBLIC FILING

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2

SUPERIOR COURT OF CALIFORNIA

3

COUNTY OF SAN MATEO

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SIX4THREE, LLC, a Delaware limited :

6

liability company, :

7

Plaintiff : Case No.:

8

v. : CIV 533328

9

FACEBOOK, INC., a Delaware :

10

Corporation and DOES 1 through 50, :

11

Inclusive :

12

Defendants :

13

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14

15

Videotaped Deposition of BERNARD HOGAN, Ph.D.

16

Washington, D.C.

17

Wednesday, July 26, 2017

18

12:47 p.m.

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21

22

Job No.: BO-132111

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Pages 1 - 346

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Reported by: Melissa Mandell

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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN MATEO

SIX4THREE, LLC, a Delaware)
limited liability company,)
)
)
Plaintiff,)
)
v.) Case No. CIV 533328
)
FACEBOOK, INC., a Delaware)
corporation and DOES 1)
through 50, inclusive,)
)
Defendants.)
_____)

CONFIDENTIAL

Videotaped deposition of BERNARD HOGAN, PH.D.

(Volume II, pages 347 - 469 inclusive)

London, England

Thursday, October 26, 2017

Reported by:
Leah Willersdorf,
ACR, MBIVR, QRR2,
International Participating
Member NCRA.

Job No. 10036637

1 paragraph -- or number eight on that page. Do you 01:37:36
2 recall that? 01:37:38

3 A. Yes. 01:37:39

4 Q. So what did you understand paragraph eight 01:37:39
5 to mean? 01:37:42

6 MS. MEHTA: Objection; foundation, calls 01:37:44
7 for a legal conclusion, purports to call for expert 01:37:45
8 opinion from a lay witness, irrelevant. 01:37:49

9 A. So when I was developing applications on 01:37:52
10 Facebook, part of that required me to sort of look 01:37:56
11 at Facebook's code. There are things called 01:37:59
12 packages, for example. Packages are ways in which 01:38:03
13 we can use a programming language. I had previously 01:38:07
14 identified I teach one called Python. So there's a 01:38:10
15 Python package for -- that helps you access Facebook 01:38:14
16 data. You submit the appropriate credentials and 01:38:18
17 then you can get the appropriate data. Facebook had 01:38:22
18 offered some various code and endpoints on their 01:38:26
19 websites. I understood this to mean that if they 01:38:31
20 had offered it for me to use as a developer, then I 01:38:36
21 could use it as a developer. 01:38:40

22 Q. Earlier in the deposition, you made 01:38:42
23 reference to something called FQL. Do you recall 01:38:44
24 that? 01:38:47

1 So Graph Search seemed like it would be a 01:53:26
2 way to simplify this task of querying Facebook for 01:53:29
3 this data and showing that data to the user. 01:53:32

4 Q. You testified a few minutes ago regarding 01:53:36
5 limitations on the amount of data that could be 01:53:42
6 queried. Do you recall that? 01:53:46

7 A. Yes, I do. 01:53:49

8 Q. Is there a technical term for that that 01:53:49
9 you're familiar with? 01:53:52

10 A. Oh you're -- are you -- 01:53:53

11 MS. MEHTA: Objection -- hold on. 01:53:54

12 THE WITNESS: Oh, I'm sorry. 01:53:56

13 MS. MEHTA: Objection; calls for 01:53:57

14 speculation, foundation, purports to call for expert 01:53:57
15 testimony from a lay witness. Now you can go ahead. 01:54:00

16 A. So I had originally -- or I had previously 01:54:05
17 spoke about the fact that you could only get 5,000 01:54:08
18 friendships back from a single query. That's a kind 01:54:13
19 of limiting. So you can limit the data -- or data 01:54:16
20 is limited by a platform in a number of different 01:54:20
21 ways, but mainly it's volume and velocity. So 01:54:23
22 volume is limiting how much data the developer or 01:54:30
23 the developer's application -- sorry -- volume is 01:54:36
24 how much data the application can receive. Velocity 01:54:40

1 is how fast -- velocity is how fast the data can be 01:54:45
2 queried. 01:54:51

3 So 5,000 is an example of volume. You can 01:54:52
4 only receive so much data per query. Velocity is 01:54:55
5 how many queries you can make under a specific time 01:55:00
6 period, and that's call rate limiting. So a lot of 01:55:04
7 platforms have rate limiting baked in and we 01:55:07
8 commonly consult documents to see what that rate 01:55:12
9 limiting is. Twitter, for example; if you wanted to 01:55:16
10 get friendships from Twitter, that's the get friends 01:55:20
11 permission, and you can only query that, I believe, 01:55:24
12 180 times every 15 minutes. And so after you've 01:55:26
13 queried it 180 times -- say, give me the first set 01:55:38
14 of friends, give me the second batch of friends, 01:55:43
15 give me the third batch of friends -- once you get 01:55:43
16 to 180, you have to stop and wait until your 15 01:55:45
17 minutes are up and then continue. Facebook have 01:55:49
18 rate limiting as well, although I do not recall any 01:55:54
19 specific document from Facebook that stipulated 01:55:58
20 precisely their rate limiting. But I do know that 01:56:01
21 they do rate limit and that we had to ensure that 01:56:05
22 our program did not ask Facebook too quickly for 01:56:09
23 data or else no data would be returned. 01:56:15

24 MS. MEHTA: Objection; move to strike, 01:56:19

1 nonresponsive.

01:56:19

2 Q. Does the -- or did the Facebook Statement
3 of Rights and Responsibilities have anything, any
4 provisions in it regarding rate limiting?

01:56:21

01:56:23

01:56:27

5 MS. MEHTA: Objection --

01:56:31

6 A. I don't --

01:56:33

7 MS. MEHTA: Hold on. Objection; vague,
8 foundation, calls for speculation, purports to call
9 for expert testimony from a lay witness, and
10 irrelevant.

01:56:33

01:56:33

01:56:37

01:56:40

11 A. I don't recall the phrase rate limiting in
12 the Statement of Rights and Responsibilities, but I
13 do know that in the Statement of Rights and
14 Responsibilities they do refer to limiting. Whether
15 that refers to the volume of data or the velocity of
16 data or both, I don't know.

01:56:44

01:56:46

01:56:50

01:56:51

01:56:54

01:57:00

17 Q. And do you still have Exhibit 1 in front
18 of you?

01:57:04

01:57:07

19 A. I do.

01:57:07

20 Q. Is it open to page 21?

01:57:09

21 A. Oh, yes.

01:57:10

22 Q. And again on the previous page 20, this is
23 section nine entitled Special Provisions Applicable
24 to Developers/Operators of Applications and

01:57:13

01:57:17

01:57:22

1 Websites, correct?

01:57:25

2 A. Uh-huh.

01:57:26

3 Q. And then on page 21, number nine up there
4 at the top states, "we can limit your access to
5 data." Do you see that?

01:57:27

01:57:30

01:57:33

6 A. Yes.

01:57:35

7 Q. What is your understanding or what was
8 your understanding of what that meant when you read
9 it the first time?

01:57:37

01:57:37

01:57:40

10 MS. MEHTA: Hold on. Objection; vague,
11 foundation, calls for speculation, calls for a legal
12 conclusion, expert testimony from a lay witness, and
13 irrelevant.

01:57:42

01:57:43

01:57:47

01:57:49

14 A. When I read that phrase, which was
15 important to me because I obviously wanted to abide
16 by the rights and responsibilities -- I didn't want
17 them to, you know, revoke my access or restrict my
18 access -- I assumed that that meant that they can
19 either limit -- as in give me only so much data --
20 in terms of volume or rate limit, as in only give it
21 to me so fast.

01:57:53

01:57:55

01:57:59

01:58:02

01:58:09

01:58:15

01:58:19

01:58:24

22 Q. And what is it about that sentence that
23 led you to believe that that's what it meant?

01:58:25

01:58:31

24 MS. MEHTA: Same objections.

01:58:35

1 A. Nothing really. I mean, the word limit is 01:58:36
2 there, but also it's not the sentence that gave me 01:58:39
3 that impression. It's the fact that I 01:58:42
4 download social network data from a variety of 01:58:44
5 sources and that I was interpreting this in line 01:58:48
6 with the similar statements from Twitter or LinkedIn 01:58:52
7 or other platforms -- Reddit, for example -- that 01:58:56
8 also limit data in specific ways. 01:59:00

9 Q. Did the word limit have particular 01:59:04
10 significance to you? 01:59:07

11 MS. MEHTA: Same objections, asked and 01:59:09
12 answered. 01:59:10

13 A. You mean, to the extent that it made me 01:59:12
14 think of rate limiting or limiting by volume? 01:59:16

15 Q. Did you understand when you read this 01:59:20
16 sentence that we're talking about that it gave 01:59:21
17 Facebook the right to terminate access to data at 01:59:25
18 some period in time? 01:59:31

19 MS. MEHTA: Same objections. 01:59:33

20 A. So not in this statement. This statement 01:59:34
21 to me seems like -- that they could slow down data. 01:59:37
22 And also as my work evolved and I'm sort of using 01:59:40
23 Facebook more for more kinds of data, that just 01:59:48
24 reinforced my understanding of that. So the fact 01:59:54

1 that they said, we'll only give you 5,000 01:59:58
2 friendships at a time, or that you can only do, I 02:00:01
3 believe, 60 queries in 60 seconds. I think that's 02:00:04
4 their rate limit. I don't -- I can't confirm that. 02:00:08
5 But that's -- so the fact that they had limited data 02:00:12
6 in some ways and that they said that they limit 02:00:15
7 access to data, that just seemed to make sense to 02:00:20
8 me. 02:00:24

9 Q. At any point in time, say, up until the 02:00:24
10 date of this document, which is December of 2012, 02:00:29
11 did you have an understanding that Facebook was 02:00:33
12 reserving the right to cut off access to data 02:00:37
13 completely? 02:00:41

14 MS. MEHTA: Same objections. 02:00:43

15 A. I do not know if I had read anywhere in 02:00:46
16 particular that that's the case, but I had assumed 02:00:49
17 that if you did not abide by these terms and 02:00:52
18 conditions, they would revoke your developer key. 02:00:55
19 The developer key is what allows you to talk to 02:00:59
20 Facebook. And so I had assumed that at some point, 02:01:02
21 if you don't abide by these conditions, they would 02:01:03
22 revoke that. 02:01:07

23 Q. What was your understanding if you did 02:01:09
24 abide by their rules and regulations? 02:01:11

1 MS. MEHTA: Same objections. 02:01:15

2 A. That I would -- that developers would be 02:01:16
3 treated fairly, that they would be able to access 02:01:19
4 the data that is stipulated by Facebook as being 02:01:21
5 accessible. 02:01:26

6 Q. And you've testified a little bit about 02:01:29
7 two apps that you developed. What were the names of 02:01:33
8 those apps? 02:01:38

9 A. One is call NameGenWeb and that's -- the 02:01:39
10 reason it's called that is because in social network 02:01:42
11 analysis, the technique for eliciting friendships is 02:01:47
12 called a name generator. And so I'd say, how many 02:01:51
13 people do you know? How many people do you know 02:01:55
14 that are important to you? That's a name generator 02:01:57
15 question. So this being an online version of that, 02:02:00
16 I called it NameGenWeb. 02:02:03

17 The other application is called College 02:02:07
18 Connect, and that's because it's about connecting 02:02:08
19 people to their friends in such a way that they 02:02:15
20 could learn more about colleges. 02:02:19

21 Q. Just to put a timeframe on this, 02:02:22
22 approximately when did you develop NameGenWeb? 02:02:24

23 A. So NameGenWeb started in -- definitely at 02:02:28
24 least in 2008. While I was still at the University 02:02:32

1 it as? 02:06:50

2 MS. MEHTA: Objection; foundation, 02:06:51

3 speculation. 02:06:51

4 A. So I'm not entirely sure if your mean this 02:06:54

5 but -- 02:06:58

6 Q. Let me ask a different question. 02:06:59

7 A. Sure. 02:07:00

8 Q. Are you familiar with something call Graph 02:07:00

9 API Version 2? 02:07:02

10 A. Two, yes. 02:07:05

11 MS. MEHTA: Objection; leading. 02:07:06

12 A. I am familiar with Graph API Version 2. 02:07:07

13 Q. And what is your understanding of what 02:07:09

14 Graph API Version 2 or 2.0 is? 02:07:11

15 MS. MEHTA: Objection; foundation, 02:07:15

16 speculation, purports to call for expert testimony 02:07:15

17 from a lay witness, and irrelevant. 02:07:19

18 A. So what they announced in 2014 was Graph 02:07:22

19 API 2.0. Previously, when I was discussing a change 02:07:27

20 in 2010, that was Graph API 1.1. Graph API 2.0 is 02:07:31

21 the change or the ensemble of changes to the way 02:07:38

22 that a application can talk to Facebook that led to 02:07:43

23 the sort of way I couldn't do my work anymore. 02:07:47

24 Q. And just so that the record is clear, can 02:07:52

1 you explain, what was it about this announcement 02:07:55
2 that caused you not to be able to do your work 02:07:59
3 anymore? 02:08:02

4 MS. MEHTA: Objection; assumes facts not 02:08:03
5 in evidence and same objections as prior. 02:08:05

6 A. The announcement didn't prevent me from 02:08:08
7 doing my work. The changes prevented me from doing 02:08:12
8 my work. They happened a year later. So I still 02:08:13
9 had one year where both NameGenWeb was available and 02:08:16
10 College Connect was available. But the changes, 02:08:22
11 when they happened, they prevented me from accessing 02:08:24
12 friendship relations on behalf of a user. 02:08:30

13 Q. And what changes took effect in April of 02:08:34
14 2015? 02:08:38

15 A. So in April of 2015, that was the changes. 02:08:38
16 First of all, it required the get friends 02:08:42
17 permission, but that's okay. We could have, you 02:08:44
18 know, just added that permission in if it gave the 02:08:47
19 equivalent data, but it did not give the equivalent 02:08:51
20 data. Instead, it only gave data about friends that 02:08:54
21 also authorized an application. 02:08:58

22 So as an example, you could see -- so 02:09:00
23 let's say I want to make a wedding planner. Before, 02:09:04
24 you could, say, have a whole list of a person's 02:09:08

1 friendships and then you could select which one's 02:09:13
2 going to be the photographer, which ones' going to 02:09:15
3 be the bridesmaids, and which ones are invited or 02:09:17
4 not invited. Now, if you wanted to do a wedding 02:09:21
5 planner, you would have to say, hey, every single 02:09:24
6 one of my friends on Facebook, please add this 02:09:28
7 application so that I can make a wedding planner. 02:09:31

8 Q. Why is that a problem? 02:09:36

9 MS. MEHTA: Objection; purports to call 02:09:38
10 for expert opinion from a lay witness, irrelevant, 02:09:39
11 foundation, speculation. 02:09:41

12 A. For the case of a wedding planner, it 02:09:45
13 would be a minor inconvenience perhaps. It would 02:09:48
14 slow the app down. It would make it somewhat 02:09:55
15 inconvenient. In my case, where I'm trying to show 02:09:57
16 all of a user's friends or almost all of a user's 02:10:02
17 friends back to that user, there is no reasonable 02:10:04
18 way that I would be able to spam a user's friends to 02:10:08
19 say, you should also add this application so that 02:10:14
20 your friend can visualize their social network. 02:10:18
21 It's just a sort of interaction that's not very -- 02:10:21
22 not very common, not very meaningful. Just it's 02:10:24
23 something that would be inappropriate. 02:10:30

24 Facebook have themselves tried to prevent 02:10:33

1 spamming on their site. There was a time, say five 02:10:36
2 years ago, when companies like Zynga, who owned 02:10:39
3 Farmville, would post all sorts of Farmville 02:10:44
4 invitations on a person's wall. And that was 02:10:48
5 considered very distasteful and most people did not 02:10:52
6 like that. So employing that practice would only 02:10:55
7 inhibit my work either because Facebook would 02:10:59
8 perceive it as spamming or because people in a 02:11:04
9 person's social network would consider it as 02:11:07
10 inappropriate. 02:11:09

11 Q. And so what happened on April -- was it 02:11:11
12 April 30th, 2015? 02:11:14

13 A. I believe it was -- 02:11:18

14 MS. MEHTA: Objection; vague and prior 02:11:18
15 objections. 02:11:20

16 A. Yes. 02:11:20

17 Q. What happened on April 30th, 2015 with 02:11:22
18 respect to your two apps, NameGenWeb and College 02:11:27
19 Connect? 02:11:29

20 MS. MEHTA: Objection; calls for expert 02:11:31
21 opinion from a lay witness, vague, and irrelevant. 02:11:31

22 A. So approximately April 30th, 2015, if I 02:11:36
23 was to query Facebook for the friendships of an 02:11:41
24 individual or -- I mean, I'm not querying it. My 02:11:47

1 application is querying it on behalf of a user. If 02:11:50
2 my application is querying Facebook, it would return 02:11:51
3 no data. Facebook had notified myself and other 02:11:56
4 developers of this through a thing called Breaking 02:12:03
5 Changes. And so we were well aware of the fact that 02:12:06
6 our app would no longer work because our app used 02:12:11
7 queries that would no longer function. 02:12:14

8 MR. GODKIN: Let me now ask the court 02:12:18
9 reporter to mark as Exhibit Number 2 this document. 02:12:20

10 (Exhibit 2 was marked for identification 02:12:44
11 and was attached to the transcript). 02:12:45

12 Q. Placed in front of you, we've marked as 02:12:45
13 Hogan Exhibit 2, Dr. Hogan. Can you identify Hogan 02:12:49
14 Exhibit 2? 02:12:51

15 A. Yes. This is a paper that I wrote for a 02:12:52
16 conference called Quantitative Methods in the Social 02:12:55
17 Sciences 2. This conference took place at the 02:13:00
18 University of Amsterdam and this was the paper that 02:13:03
19 I submitted which was a way of introducing the 02:13:07
20 ability to represent a person's social network via 02:13:13
21 Facebook. I use this -- in this paper, I describe 02:13:19
22 how certain connections, certain friendships in my 02:13:23
23 friendship network were more important to me, more 02:13:30
24 personally important and that they could be 02:13:34

1 identified through various statistical means that 02:13:37
2 are available to social network researchers. 02:13:45

3 Q. And if you turn to -- strike that. 02:13:53

4 What is the date of this publication? 02:13:58

5 A. This publication is not dated but it -- 02:14:01

6 Q. If you look at the second page. 02:14:04

7 A. Oh, well. Yeah, I was going to say it was 02:14:07
8 December 2nd, but it's actually -- yes, it says here 02:14:07
9 December 1st, 2008. 02:14:10

10 Q. Is this the first publication that you 02:14:11
11 authored concerning Facebook -- 02:14:15

12 MS. MEHTA: Irrelevant. 02:14:19

13 Q. -- or were there other ones? 02:14:19

14 MS. MEHTA: Irrelevant. 02:14:21

15 A. It's reasonable to assume that previous 02:14:23
16 publications that I have authored, particularly one, 02:14:26
17 a book chapter called "Using Information Networks to 02:14:30
18 Elicit Social Behavior" or something to that 02:14:35
19 nature -- it's in the book the Handbook of Online 02:14:40
20 Research Methods by Fielding, Lee, and Blank -- it's 02:14:43
21 reasonable to assume that I would have mentioned 02:14:50
22 Facebook in that document. But this is the first 02:14:53
23 document where I am doing research explicitly on 02:14:57
24 Facebook. 02:15:01

1 Q. At the time you wrote this article, do you 02:15:03
2 know approximately how many people were using 02:15:07
3 Facebook as a social network? 02:15:10

4 MS. MEHTA: Objection; foundation, calls 02:15:13
5 for speculation, purports to call for expert opinion 02:15:14
6 from a lay witness. 02:15:17

7 A. Approximately this time, I believe around 02:15:20
8 170 to 200 million people were -- had joined 02:15:25
9 Facebook. It may be more. 02:15:29

10 Q. On the second page of the article, there's 02:15:35
11 a Roman numeral three which is entitled Other 02:15:42
12 Network Data Available Through Facebook. Do you see 02:15:46
13 that? 02:15:50

14 A. Yes, I do. 02:15:50

15 Q. At then at the top of the second column, 02:15:51
16 item number one is photos. 02:15:52

17 A. Yes. 02:15:55

18 Q. Were photos a type of data that was made 02:15:56
19 available on the Facebook platform? 02:16:02

20 MS. MEHTA: Same objections. 02:16:05

21 A. Yes, that is the case. Photo data was 02:16:06
22 available, and you can see here I've discussed 02:16:07
23 various applications other than mine that have used 02:16:11
24 that data. 02:16:13

1 Q. And did you ever use photos in any of your 02:16:14
2 applications? 02:16:18

3 MS. MEHTA: Same objections. 02:16:21

4 A. I used profile photos in one of my 02:16:22
5 research endeavors. It was not by me in particular 02:16:25
6 but it was by a student I had mentored. 02:16:29

7 Q. And who was that student? 02:16:33

8 A. Her name was Nina Jones and she was a high 02:16:33
9 school student. I was approached in, I believe, 02:16:35
10 2011 by the BBC. They were running -- 02:16:39

11 Q. British Broadcasting Company? 02:16:44

12 A. Yes, by the British Broadcasting Company, 02:16:47
13 sort of a major broadcaster in the United Kingdom, 02:16:49
14 and they have both television channels -- BBC1, 02:16:53
15 BBC2 -- and radio stations -- Radio 1 and so forth. 02:16:58
16 Radio 4 is their station for like news, current 02:17:03
17 affairs, scientific programs, documentaries. Radio 02:17:08
18 4 was running a program called So You Want To Be A 02:17:12
19 Scientist, and people would apply to be a scientist. 02:17:15
20 It was a competition. The lady who won it found out 02:17:21
21 how far snails go before they can return -- before 02:17:25
22 they know -- to lose their way. 02:17:31

23 Nina was also in this competition and she 02:17:32
24 made it to the finals. Her project was analyzing 02:17:33

1 Facebook profile photos. So these profile photos, 02:17:38
2 she coded them for whether people were smiling, 02:17:43
3 whether there were even people in the photos, or 02:17:45
4 there were cartoons and so forth. And then we did 02:17:48
5 an analysis to reveal some features about these 02:17:50
6 photos. And so for example, we found that women 02:17:54
7 were more likely to smile in their photos than men. 02:17:56

8 Q. And were you her supervisor or mentor or 02:18:01
9 what were you? 02:18:05

10 A. I was her mentor through this. She was a 02:18:06
11 high school student. The purpose of this program 02:18:08
12 was to help laypeople who don't have an experience 02:18:11
13 or background in science to accomplish a scientific 02:18:15
14 proposal. 02:18:19

15 Q. Back at the sentence we were looking at -- 02:18:21
16 or the item regarding photos, you wrote, "Facebook 02:18:24
17 does not merely enable individuals to upload photos 02:18:27
18 but to tag these photos with other individuals who 02:18:30
19 are present in the photos." What was the 02:18:33
20 significance of that? 02:18:35

21 MS. MEHTA: Objection; vague, foundation, 02:18:40
22 speculation, and irrelevant. 02:18:41

23 A. Part of this work was to introduce the 02:18:51
24 opportunity to do research on Facebook and to 02:18:54

1 indicate -- partially to justify why I'm doing this. 02:19:00
2 At this point, people would say, why are you doing 02:19:04
3 work on Facebook? It's just an online website. 02:19:05
4 It's not important like real life, or something like 02:19:09
5 that. These days we tend to assume Facebook is a 02:19:10
6 part of real life. 02:19:15
7 So in that, I introduced not only the work 02:19:16
8 that I was doing but also to highlight other work 02:19:19
9 that was being done on Facebook. In academic work, 02:19:24
10 we call this part of our literature review. That 02:19:27
11 way, we have to show that we're part of a field and 02:19:31
12 not just doing whatever we feel like. Previously, 02:19:34
13 there was a paper that has used photos on Facebook 02:19:36
14 and used the fact that individuals could be 02:19:41
15 identified in photos on Facebook in order to 02:19:43
16 generate scientific insights. So the insight that 02:19:45
17 they generated in this paper, the insight that I 02:19:45
18 refer to, is the fact that you may have many 02:19:52
19 friendship relations, hundreds even, but people tend 02:19:56
20 to have many fewer people identified in their own 02:20:00
21 photos and that that was an interesting insight at 02:20:04
22 the time. 02:20:08
23 Q. And then turn if you would to page number 02:20:10
24 four of your article. 02:20:25

1 A. Okay, I see that, yes.

02:20:27

2 Q. You see that? And there's -- you have
3 section five entitled Employing the Facebook API.

02:20:28

02:20:30

4 A. Yes.

02:20:36

5 Q. And you state "the Facebook API is
6 designed to facilitate access to data about a user
7 and the user's friends." Can you explain what you
8 meant by that?

02:20:36

02:20:38

02:20:44

02:20:49

9 MS. MEHTA: Objection; irrelevant.

02:20:51

10 A. Well, that sentence means that -- or the
11 intent of me saying that is indicating that Facebook
12 have put in place a mechanism by which an
13 application can legitimately receive data from
14 Facebook. This is important to state because at the
15 time there were many questions about whether you
16 could access data from Facebook, first, and second
17 of all, what are the appropriate ways to do it. So
18 some people were trying to get data by, say,
19 photographing what's on the screen or downloading
20 what's on the screen, which is called screen
21 scraping. People were trying to use all sorts of
22 hacks to get into Facebook. But this I had
23 considered because it was based on the Statement of
24 Rights and Responsibilities and because it was so

02:20:54

02:21:00

02:21:04

02:21:07

02:21:12

02:21:15

02:21:18

02:21:21

02:21:24

02:21:27

02:21:31

02:21:35

02:21:38

02:21:42

02:21:43

1 clearly laid out that the Facebook API was the sort 02:21:47
2 of preferred way to get data. 02:21:51

3 Q. And then you go on in this paragraph to 02:21:54
4 talk about queries which we discussed earlier -- 02:21:57

5 A. Yes. 02:22:03

6 Q. -- correct? And one of them -- you 02:22:03
7 mentioned FQL. 02:22:04

8 A. Uh-huh. 02:22:06

9 Q. Do you see that? 02:22:08

10 A. Yes. 02:22:09

11 Q. Which is a restricted variant of the 02:22:09
12 commonly used SQL; correct? 02:22:10

13 A. Uh-huh. 02:22:13

14 Q. You need to say yes or no. 02:22:14

15 A. Yes. 02:22:16

16 Q. Sorry, Dr. Hogan. And then you drop a 02:22:16
17 footnote, "Special thanks are extended to Cameron 02:22:20
18 Marlow for providing guidance on this query." Do 02:22:24
19 you see that? 02:22:27

20 A. Yes, I see that. 02:22:27

21 Q. Now, is that the same Cameron Marlow that 02:22:28
22 you testified about earlier -- 02:22:31

23 A. That is correct. 02:22:33

24 Q. -- who worked for Facebook? 02:22:33

22	It turns out that did not work as	02:23:45
23	intended, that -- because of the 5,000 limit, the	02:23:48
24	fact that you can only get 5,000 friends. So I had	02:23:52

1 to modify this query slightly. In later 02:23:56
2 presentations, I have presented a modified version 02:24:00
3 of this query. However, I would not have arrived at 02:24:03
4 that modified version had I not seen this initial 02:24:07
5 query. The query is quite funny looking and it's 02:24:11
6 that funny bit about select in, select where, select 02:24:15
7 stuff which I was not an expert on, and that was 02:24:18
8 what really helped. It made a material difference 02:24:23
9 in my capacity to download these friendship 02:24:26
10 relations. 02:24:28
11 MS. MEHTA: Objection; move to strike, 02:24:30
12 nonresponsive. 02:24:31
13 Q. And then if you turn to page six of this 02:24:32
14 publication, there's a Figure 1. 02:24:35
15 A. Yes. 02:24:38
16 MR. GODKIN: And then let me ask the court 02:24:40
17 reporter to mark as Exhibit 3 this document. 02:24:41
18 (Exhibit 3 was marked for identification 02:24:42
19 and was attached to the transcript.) 02:24:42
20 Q. And can you identify Exhibit 3? 02:25:02
21 A. Yes. Exhibit 3 is a -- this is a visual 02:25:06
22 representation of my social network, which is to say 02:25:09
23 those things I was talking about earlier, dots and 02:25:14
24 lines. Each dot represents a person and the lines 02:25:17

1 represent the friendships between those people. 02:25:21
2 This is a visualization of my social network that 02:25:24
3 uses certain technical principles in order to kind 02:25:28
4 of group people together. And in doing so, it makes 02:25:34
5 the visualization sort of tidy and helps me identify 02:25:38
6 clusters of people, such as one cluster, which is -- 02:25:43
7 say, that's my high school friends and they're all 02:25:46
8 connected to each other, and my family and they're 02:25:48
9 all connected to each other. 02:25:49

10 Q. And Exhibit 3 is the same as Figure 1 in 02:25:52
11 the article, Exhibit 2; is that right? 02:25:56

12 A. This is correct. It is a -- just a -- 02:25:59
13 simply it's just a larger version of that one. 02:26:00

14 Q. And what is the significance of the lines 02:26:04
15 going between the clusters? 02:26:07

16 A. So each line in this document represents a 02:26:09
17 friendship. So this would be one person here -- 02:26:14
18 that's my partner, and that right there -- and I met 02:26:18
19 my partner during undergraduate, and that's high 02:26:20
20 school. And so my partner knows people that I know 02:26:23
21 from high school, but my partner knows lots and lots 02:26:27
22 of people in undergraduate and also knows some 02:26:30
23 people in graduate school and so forth. So each 02:26:31
24 line is a friendship on Facebook that creates this 02:26:35

1 picture. 02:26:38

2 Q. It's a connection, if you will? 02:26:39

3 A. It is explicitly the friendship that you 02:26:42
4 get between two people on Facebook if you request to 02:26:48
5 be someone's friend and then they accept. That 02:26:51
6 connection can signify all sorts of things. It 02:26:56
7 could be a relationship -- people can befriend other 02:27:00
8 people because they want to appear popular or 02:27:04
9 because they feel social pressure. I can't tell you 02:27:05
10 the reasons why any two people are friends here, but 02:27:08
11 I can tell you that the connections themselves are 02:27:12
12 the data that comes from Facebook. 02:27:14

13 Q. And does Exhibit 3 represent the Facebook 02:27:20
14 data before or after April 30th, 2015? 02:27:26

15 A. Oh, this represents the sort of -- so this 02:27:35
16 is what I was referring to earlier. In this 02:27:37
17 document, you might see that -- and it's beforehand. 02:27:39
18 Before April 30th, all these people and their 02:27:43
19 friendship relations would be accessible to the 02:27:47
20 user. This is me. This is my friendship relations. 02:27:51
21 Every one of these people have been aware of this 02:27:52
22 document. I have posted versions of this on my 02:27:56
23 Facebook wall. My friends have commented on it and 02:28:01
24 so forth. After April 30th, I would have to ask 02:28:02

1 every single one of these people to add an 02:28:05
2 application just so I could make a picture like 02:28:08
3 this, and realistically that would never happen. 02:28:12

4 Q. Put that aside. 02:28:17

5 Have you ever visited Facebook's offices? 02:28:23

6 A. I have. 02:28:31

7 Q. And what was the -- strike that. 02:28:33

8 When did that happen? 02:28:33

9 A. That happened twice. The first time that 02:28:36
10 happened was when I was at a -- that happens -- 02:28:37
11 apologies, that happened three times. The first 02:28:43
12 time, I was -- it was probably 2012, 2013. I had 02:28:48
13 met with a user experience researcher named Paul 02:28:56
14 Adams and a researcher named Eytan Bakshy. We met 02:29:00
15 over lunch because I was in the area. 02:29:07

16 Paul Adams at the time was a user 02:29:10
17 experience researcher at Facebook who had used some 02:29:12
18 of my methodologies for capturing network data to do 02:29:15
19 pretests, particularly pretests when he was at 02:29:20
20 Google. And so he knew who I was and so he -- I 02:29:24
21 contacted him and he said, yeah, sure, come down to 02:29:28
22 Menlo. And I had lunch with him and Eytan. It was 02:29:32
23 the first time I had met Eytan Bakshy, but we had 02:29:35
24 previously been mutually aware of each other's work. 02:29:38

1 A. No.

02:55:10

2 Q. Did you ever get notice that College
3 Connect was in violation of any Facebook policies,
4 for example?

02:55:11

02:55:14

02:55:16

5 A. No.

02:55:19

6 Q. Did you ever get notices that Facebook had
7 received complaints regarding College Connect?

02:55:19

02:55:22

8 MS. MEHTA: Objection; irrelevant.

02:55:30

9 A. No.

02:55:30

10 Q. Okay. Can you estimate the amount of
11 money that was invested to create the app before you
12 learned that Facebook was turning off access to the
13 data?

02:55:31

02:55:35

02:55:39

02:55:44

14 MS. MEHTA: Objection; vague and also
15 irrelevant.

02:55:46

02:55:47

16 A. Well, the -- there is obviously the
17 initial hundred thousand dollars that was outlaid.
18 That was -- that did not pay for the amount of time
19 that the academics had put into it, their own time
20 paid at their rates. It did not take into account
21 the in-kind support of my department, my
22 department's IT team, the server infrastructure. So
23 on top of the hundred thousand which was used for
24 development efforts, our trip to Detroit for field

02:55:48

02:55:51

02:55:53

02:56:00

02:56:02

02:56:07

02:56:08

02:56:12

02:56:15

1 testing, our designer, there would probably be 02:56:19
2 another hundred thousand of in-kind support in terms 02:56:23
3 of time spent by myself and other colleagues on this 02:56:25
4 application. 02:56:29

5 Q. All right. Thank you. 02:56:31

6 MR. GODKIN: Let me ask the reporter to 02:56:32
7 mark as the next exhibit this document. This is 02:56:34
8 Hogan Exhibit 5. 02:56:36

9 (Exhibit 5 was marked for identification 02:56:54
10 and was attached to the transcript.) 02:56:55

11 Q. I've placed in front of you what's been 02:56:56
12 marked as Hogan Exhibit 5. Dr. Hogan, can you 02:56:59
13 identify this exhibit? 02:57:01

14 A. This appears to be a story on Facebook 02:57:05
15 describing the changes that happened when they 02:57:10
16 shifted towards Graph API 2.0. 02:57:14

17 Q. And what was the significance of this 02:57:19
18 announcement to the apps you had developed? 02:57:24

19 MS. MEHTA: Objection; lacks foundation 02:57:29
20 and also irrelevant. 02:57:30

21 A. This particular document, if -- as I 02:57:33
22 understand it, because it is describing the changes 02:57:36
23 in Graph API 2.0 and other subsequent changes -- 02:57:41
24 would indicate that there were changes to the API. 02:57:49

1	a heading, "A more stable platform with Versioning	03:01:26
2	and Graph API 2.0." Do you see that?	03:01:31
3	A. Uh-huh.	03:01:34
4	Q. Yes?	03:01:34
5	A. I see that, yes.	03:01:35
6	Q. And then it goes on to talk about	03:01:37
7	important new elements of Graph API 2.0 at the	03:01:42
8	bottom of the page.	03:01:43
9	A. That is -- I see that, yes.	03:01:45
10	Q. And then at the top of the next page, it	03:01:47
11	says, "In addition to the above, we were removing	03:01:50
12	several rarely used API endpoints; visit our	03:01:54
13	changelog for details."	03:01:58
14	A. Yes.	03:02:01
15	Q. Do you see that?	03:02:01
16	A. I see that.	03:02:03
17	MS. MEHTA: Objection; foundation.	03:02:03
18	MR. GODKIN: Okay. That he sees it?	03:02:06
19	MS. MEHTA: What -- the highlighting	03:02:08
20	that's on this version in gray --	03:02:10
21	MR. GODKIN: I don't know.	03:02:11
22	MS. MEHTA: -- is that your highlighting	03:02:12
23	or is that original to the document?	03:02:13
24	MR. GODKIN: I can't answer that.	03:02:17

1 MS. MEHTA: Okay. I object to the use of 03:02:18
2 highlighted documents. This isn't the form in which 03:02:19
3 the document was produced. 03:02:21

4 BY MR. GODKIN 03:02:22

5 Q. Do you see any explanation of what the 03:02:26
6 several rarely used API endpoints are that appear on 03:02:30
7 this page of Exhibit 5? 03:02:36

8 MS. MEHTA: Objection; lacks foundation. 03:02:38

9 A. I do not see that stipulated here. I do 03:02:41
10 recall myself reviewing the changelog for the 03:02:43
11 details. 03:02:48

12 Q. And the changelog appears in Exhibit 5 -- 03:02:48

13 A. Oh, okay. 03:02:53

14 Q. -- farther back, does it not? 03:02:53

15 MS. MEHTA: Objection; lacks foundation. 03:02:55

16 A. Do you see the page with -- 03:02:57

17 A. Yes. 03:02:59

18 Q. -- page 80 at the bottom? It says 03:02:59
19 Facebook Platform Changelog at the top. Do you see 03:03:02
20 that? 03:03:04

21 A. I do see that, yes. 03:03:05

22 Q. And then if you turn -- well, what is a 03:03:07
23 changelog, in your understanding? 03:03:13

24 MS. MEHTA: Objection; purports to seek 03:03:15

1 expert testimony from a lay witness, lacks

03:03:17

2 foundation. It's also irrelevant.

03:03:19

3 A. So I look to the changelog because that's

03:03:21

4 where, as I understand it, applications, especially

03:03:24

5 Facebook, introduce new changes to the API. As I

03:03:28

6 have -- I had at that point been an app developer, I

03:03:33

7 would see in those changelog whether there was

03:03:41

8 anything of consequence to my applications. And so

03:03:43

9 for me, the changelog is a list of all those

03:03:47

10 changes. They're often very tedious.

03:03:49

11 Q. Did you review the changelog that appears

03:03:52

12 as part of Hogan Exhibit 5?

03:03:55

13 A. Yes. Well, I certainly recall reviewing

03:03:58

14 the changelog in version 2.0 on -- for example, they

03:04:03

15 do a lot of changes every time -- every time they

03:04:08

16 make any sort of new changes to Facebook. I do

03:04:14

17 unambiguously remembering reviewing this right here.

03:04:20

18 Q. Which page are you looking at?

03:04:26

19 A. I'm looking at page -- it says 91 at the

03:04:29

20 bottom of it.

03:04:31

21 Q. And -- all right -- what is it that causes

03:04:34

22 you to remember unambiguously that you reviewed this

03:04:36

23 one?

03:04:40

24 A. Unambiguously, I remember the -- under

03:04:41

1 Facebook Login at the center of the page, the second 03:04:45
2 and third bullets. "Friend list is no longer part 03:04:49
3 of the default permission set and has its own 03:04:53
4 permission." That's what I was describing earlier. 03:04:56
5 I also remember -- and this is the crucial one for 03:04:59
6 me -- "Friend list now only returns friends who also 03:05:01
7 use the app." Both of those are of material 03:05:05
8 consequence to my applications. 03:05:09

9 MS. MEHTA: Objection. 03:05:15

10 Q. In what regard? 03:05:15

11 MS. MEHTA: Objection; move to strike the 03:05:15
12 prior response as nonresponsive. Object to the 03:05:15
13 current question as seeking irrelevant information. 03:05:19

14 A. These two bullet points right here meant 03:05:24
15 that my applications, NameGenWeb and College 03:05:28
16 Connect, could no longer access a list of friends 03:05:32
17 and so therefore they could no longer represent 03:05:37
18 those friends to the user. They just couldn't work. 03:05:42

19 Q. If you move on to page -- with the number 03:05:45
20 93 at the bottom, there's a section entitled 03:05:52
21 Permissions. Do you see that? 03:05:56

22 A. Yes, I see that. 03:06:00

23 Q. And then at the very bottom, new 03:06:02
24 permissions in version 2.0. Do you see that? 03:06:03

1 A. Yes, I do. 03:06:06

2 Q. And then turn to the next page, page 94, 03:06:07
3 permissions no longer available in version 2.0. Do 03:06:08
4 you see that? 03:06:13

5 A. I do. 03:06:14

6 Q. Do you recall reviewing the permissions 03:06:14
7 that were no longer available in version 2.0? 03:06:17

8 A. I absolutely do. 03:06:20

9 Q. And did these -- did the removal of these 03:06:22
10 permissions have any significance to your apps? 03:06:25

11 MS. MEHTA: Objection; irrelevant. 03:06:30

12 A. So as I talked about earlier, College 03:06:31
13 Connect highlights which schools an individual user 03:06:34
14 on Facebook had gone to. So if you have a series of 03:06:37
15 friends on Facebook, you could see which -- see 03:06:42
16 which schools they went to. That would be, here, 03:06:44
17 the permission friends_education_history. The 03:06:49
18 friends_education_history permission that has been 03:06:57
19 removed was one that I had used in my applications. 03:07:00

20 Q. And so the removal of that permission is 03:07:04
21 one of the things that caused your app not to 03:07:07
22 function? 03:07:09

23 MS. MEHTA: Objection; relevance. 03:07:09

24 A. Along with the list of friends, yes. 03:07:10

1 Q. Did you ever contact anyone at Facebook 03:07:18
2 after you learned about these changes in version 03:07:22
3 2.0? 03:07:26

4 MS. MEHTA: Objection; relevance. 03:07:27

5 A. I did in fact contact people at Facebook. 03:07:30

6 Q. Who did you contact? 03:07:33

7 A. Well, I should say, when I later came in 03:07:36
8 contact with people at Facebook -- as I had stated 03:07:39
9 earlier, I'm -- I was program chair of a conference, 03:07:43
10 International Conference on Web and Social Media. 03:07:51
11 It's a big conference and this conference includes 03:07:55
12 researchers from Facebook and Twitter and Google and 03:07:58
13 Microsoft in addition to academics. 03:08:02

14 Q. Does that conference take place every year 03:08:05
15 or is it -- was it a one-off? 03:08:07

16 A. That is an annual conference. 03:08:09

17 MS. MEHTA: Objection, irrelevant. 03:08:10

18 Q. And when did you become the program chair? 03:08:10

19 MS. MEHTA: Irrelevant. 03:08:10

20 A. I was the program chair for two years 03:08:12
21 in -- for the 2013 and 2014 conferences. That 03:08:15
22 allowed me to attend the conference for free and 03:08:22
23 then get a light to go to the conference. 03:08:25

24 So when I was at the conference, where 03:08:30

1 there were researchers from Facebook who I had 03:08:32
2 befriended just as colleagues, I spoke with them 03:08:35
3 about this. In fact, one of them, a lady named Dr. 03:08:40
4 Lada Adamic -- L-A-D-A, A-D-A-M-I-C -- Dr. Adamic 03:08:43
5 was -- we just bumped into each other at the 03:08:53
6 airport. And so immediately, I just turned to her 03:08:57
7 and go like, what happened? And she said, I'm so 03:09:02
8 sorry. And we didn't even identify the topic of the 03:09:05
9 conversation at this point because she knew that I 03:09:11
10 was referring to these specific changes because it 03:09:14
11 was well understood that these changes would inhibit 03:09:17
12 my applications from working. 03:09:20
13 Q. Did she work -- 03:09:23
14 MS. MEHTA: Move to -- hold on -- move to 03:09:23
15 strike, nonresponsive. 03:09:23
16 Q. Did she -- did Dr. Adamic work for 03:09:26
17 Facebook at that time? 03:09:29
18 A. At that time -- 03:09:29
19 MS. MEHTA: Objection -- objection; 03:09:31
20 foundation, relevance. 03:09:31
21 Q. Do you know whether she worked for 03:09:34
22 Facebook at that time? 03:09:35
23 MS. MEHTA: Same objections. 03:09:37
24 A. At that time -- so I had known Lada for 03:09:38

1 some years. At that time, she worked for Facebook. 03:09:42
2 Prior to that, she was a professor at the University 03:09:45
3 of Michigan where she had used my app, NameGenWeb, 03:09:49
4 to teach students social networks, just like how I 03:09:52
5 said teachers around the world used my application 03:09:56
6 to show social networks. She was one of them. 03:09:59

7 Q. Can you put a date, approximate date, on 03:10:02
8 this conference and this meeting at the airport with 03:10:05
9 Dr. Adamic? 03:10:09

10 MS. MEHTA: Same objections. 03:10:09

11 A. It was in May. 03:10:10

12 Q. Of which year? 03:10:11

13 A. Of -- well, 2014. This was May or June. 03:10:13

14 I know it was very hot. It was at University of 03:10:16

15 Michigan. That information is available. But it 03:10:19

16 was -- it wasn't very long after the API changes. 03:10:21

17 It was the conference immediately following that. 03:10:24

18 Q. Okay. And can you remember anything else 03:10:27

19 about your conversation with her at the airport? 03:10:35

20 MS. MEHTA: Objection; relevance. 03:10:37

21 A. Not much really. I do remember us talking 03:10:38

22 about it. One of the things that she said to me 03:10:42

23 that had been said by a number of other academics 03:10:45

24 was that I -- she said, well, you can still access 03:10:48

1 these friendship relations if you come to Menlo and 03:10:51
2 work with us. And I replied to her that I don't -- 03:10:54
3 I don't want to just, you know, go to Facebook and 03:10:58
4 look at data at Facebook. I want to be able to show 03:10:59
5 a user their own data and so -- and then see how 03:11:02
6 that works. And so I don't think it's very fair if 03:11:05
7 I can do that inside Facebook but a regular Facebook 03:11:09
8 user cannot do that. So, I mean, I thanked her for 03:11:11
9 the offer. I thought it was very gracious. But I 03:11:16
10 was -- you know, I wanted to be able to maintain 03:11:18
11 this ability to be done outside of Facebook because 03:11:20
12 I considered this academic research and not research 03:11:24
13 for Facebook. 03:11:30
14 Q. And did you ever speak with her again on 03:11:32
15 the topic of these changes? 03:11:34
16 MS. MEHTA: Irrelevant. 03:11:37
17 A. So Dr. Adamic contacted me, I guess out of 03:11:39
18 the blue, months later. And I was actually, I 03:11:47
19 believe, hosting my relatives in Oxford at the time 03:11:52
20 and I was out somewhere. This email comes in and 03:11:57
21 she says, I'll be reviewing the API changes at -- 03:11:59
22 with Product and, you know, whether there might be 03:12:04
23 special permissions for educational use or 03:12:10
24 something. So I'd like you to tell me what you use 03:12:14

1	MS. MEHTA: Same objections.	03:23:41
2	A. That is correct.	03:23:47
3	Q. And then at the bottom of page 12, you	03:23:47
4	refer to the Open Graph API 2.0. Do you see that?	03:23:51
5	A. I do see that.	03:23:54
6	Q. And you say, "This change would prove to	03:23:56
7	be most consequential while not necessarily being	03:23:58
8	the most privacy sensitive."	03:24:02
9	A. Yes.	03:24:05
10	Q. What did you mean by that?	03:24:05
11	MS. MEHTA: Objection; purports to call	03:24:07
12	for expert testimony from a lay witness, vague,	03:24:07
13	foundation, and irrelevant.	03:24:10
14	A. So one of the reasons that were given, in	03:24:14
15	my understanding, for the removal of the friendship	03:24:21
16	permissions was that this -- that the friendship	03:24:26
17	permissions were too generous. Too many people had	03:24:28
18	access to the Facebook graph because it was part of	03:24:32
19	the basic permissions. That means any application	03:24:35
20	developer could have this. So that is probably too	03:24:38
21	generous. That's likely too generous. And so I	03:24:43
22	agree with Facebook in making it its own special	03:24:47
23	permission that you have to request and not just	03:24:50
24	giving it away for free.	03:24:53

1 However, instead of making it its own 03:24:56
2 permission and just -- instead of making its own 03:24:58
3 permission and still having the same data available, 03:25:05
4 they made it its own permission and really 03:25:09
5 drastically restricted the scope of what data was 03:25:13
6 available. So they would say that that's for 03:25:16
7 privacy reasons. But as is evident, other 03:25:18
8 applications still appear to be able to access this 03:25:23
9 data, even though it's not supposed to be available. 03:25:28

10 Q. What applications are you referring to? 03:25:31

11 A. I know for a -- 03:25:34

12 MS. MEHTA: Hold on. Objection; 03:25:34
13 irrelevant, purports to call for expert opinion from 03:25:35
14 a lay witness, foundation, speculation. 03:25:37

15 THE WITNESS: I knew that was coming for 03:25:42
16 that one. 03:25:44

17 A. So I was single for awhile and I had used 03:25:51
18 Tinder, which is an online dating application. It 03:25:55
19 shows you people that are also on Tinder in your 03:26:00
20 local area. Now, Tinder used Facebook as a login. 03:26:05
21 And so you could download your photos from Facebook 03:26:08
22 to Tinder and so that they would be available on 03:26:11
23 Tinder. And after the API change, it also showed 03:26:14
24 you -- you know, so these people that you would see 03:26:18

1 and then say this could be a prospective date. And 03:26:21
2 then you could do things like swipe left to say no, 03:26:25
3 I'm not interested or swipe right to say yes, I am 03:26:28
4 interested. 03:26:30

5 In order to make these people feel less 03:26:32
6 like strangers, there's lots of other information 03:26:36
7 there, and this information primarily comes from 03:26:38
8 Facebook. This includes whether Tinder -- this 03:26:41
9 Tinder user, who is a stranger, has friends in 03:26:46
10 common with you. So even though they have inhibited 03:26:50
11 me from showing a user their own friends, Facebook 03:26:56
12 still allow Tinder to show a complete stranger the 03:27:00
13 friends that we have in common. 03:27:06

14 MS. MEHTA: Move to strike, nonresponsive. 03:27:08

15 A. That is what I meant by saying it would be 03:27:10
16 very consequential while not necessarily being the 03:27:13
17 most privacy sensitive. 03:27:17

18 Q. Okay, thank you. Did you or have you read 03:27:20
19 any articles in the public press about Facebook 03:27:26
20 entering into some sort of a private agreement with 03:27:31
21 Tinder to make this available? 03:27:35

22 MS. MEHTA: Objection; irrelevant, 03:27:38
23 foundation, speculation. 03:27:38

24 A. I was curious as to how they had access 03:27:42

1 to -- how Facebook had -- how Tinder, sorry -- had 03:27:45
2 access to the Facebook social graph. And I was 03:27:48
3 forwarded a story that actually featured College 03:27:53
4 Connect in it. It featured my colleague, Nicole 03:27:57
5 Ellison, not myself. I was never interviewed for 03:28:00
6 that specific article. In that article, it is 03:28:05
7 quoted as saying that Tinder have had some sort of 03:28:08
8 access to Facebook. That's the only time I can 03:28:14
9 recall seeing that in print. I was surprised to see 03:28:17
10 it in print, in fact. 03:28:22

11 MR. GODKIN: Let me ask the reporter to 03:28:24
12 mark as the next exhibit this document. So this 03:28:25
13 would be ... 03:28:27

14 THE COURT REPORTER: Eight. 03:28:27

15 MR. GODKIN: Eight. 03:28:27

16 (Exhibit 8 was marked for identification 03:28:42
17 and was attached to the transcript.) 03:28:45

18 BY MR. GODKIN 03:28:45

19 Q. I've placed in front of you what we've 03:28:45
20 marked as Hogan Exhibit 8, Dr. Hogan. 03:28:45

21 A. Yes. 03:28:48

22 Q. Can you identify Exhibit 8? 03:28:49

23 A. This is the Wall Street Journal article by 03:28:51
24 Deepa Seetharaman and Elizabeth Dwoskin that I had 03:28:54

1 mentioned previously which was a document that -- 03:29:00
2 was a newspaper story describing the changes that 03:29:03
3 took place with Graph API 2.0. 03:29:09

4 Q. And this is the article that you just 03:29:13
5 testified about a few moments ago? 03:29:16

6 A. Yes, this is the article I testified a few 03:29:18
7 minutes ago that mentioned, you know, API changes 03:29:21
8 and who can still access this data. 03:29:25

9 Q. And if you turn to the third page, there's 03:29:29
10 an article in the middle -- in the middle of the 03:29:33
11 page referencing the popular dating app Tinder. Is 03:29:35
12 that what you were referring to -- 03:29:40

13 MS. MEHTA: Oh -- sorry, go ahead. 03:29:41

14 Q. -- that gave you the information that you 03:29:41
15 testified about Tinder and Facebook? 03:29:44

16 MS. MEHTA: Objection; foundation, 03:29:47
17 speculation, irrelevant. 03:29:48

18 A. Yes, this is the article in question and 03:29:51
19 that is the paragraph in question. 03:29:54

20 Q. And the next paragraph, which begins 03:29:56
21 "Facebook changes doomed College Connect, an app 03:29:59
22 aimed at helping prospective first-generation 03:30:02
23 college students find friends who attend schools or 03:30:07
24 hold jobs they are considering," correct? 03:30:11

1	A.	That is correct.	03:30:14
2	Q.	And that's your app, College Connect?	03:30:14
3	A.	That is my app.	03:30:18
4	Q.	And the next sentence references Nicole	03:30:19
5		Ellison, a University of Michigan professor, and	03:30:22
6		she's your colleague that worked with you on the	03:30:25
7		College Connect app?	03:30:28
8	A.	That is the very same Nicole Ellison.	03:30:28
9	Q.	Okay. Were you interviewed by the Wall	03:30:35
10		Street Journal for this article?	03:30:39
11	A.	I was not --	03:30:40
12		MS. MEHTA: Asked and answered.	03:30:40
13	A.	I was not interviewed by the Wall Street	03:30:42
14		Journal for this article.	03:30:42
15	Q.	Did Facebook offer College Connect the	03:30:46
16		same access to data as it apparently is giving	03:30:50
17		Tinder?	03:30:54
18		MS. MEHTA: Objection; assuming facts not	03:30:54
19		in evidence, foundation, speculation, irrelevant.	03:30:56
20	A.	To the best of my knowledge, we have not	03:31:01
21		been approached by Facebook to be given the same	03:31:04
22		level of access to data that Tinder has. The	03:31:08
23		closest to that would have been the previously	03:31:13
24		mentioned conversation with Dr. Adamic about an	03:31:16

1 educational API.

03:31:19

2 Q. Did the introduction of the changes
3 reflected in Graph API Version 2.0 have an effect on
4 your research?

03:31:21

03:31:24

03:31:30

5 MS. MEHTA: Objection; irrelevant.

03:31:32

6 A. That -- the changes made the applications
7 that I was developing or had developed cease to
8 function. So I had to change some of my research
9 agenda as a consequence. Up to that point, I
10 thought that I would be continuing on a variety of
11 work on the Facebook API moving forward. In fact,
12 as I said, we changed College Connect. We changed
13 it to be a laboratory study. In that laboratory
14 study, we showed that actually showing the Facebook
15 social graph made a real difference to who people
16 were able to nominate as their -- as good people for
17 advice.

03:31:36

03:31:42

03:31:47

03:31:52

03:31:55

03:31:59

03:32:04

03:32:07

03:32:10

03:32:13

03:32:16

03:32:22

18 So I wanted to continue on this. I have,
19 for example, a colleague at the University of
20 Swansea, Dr. Daniel Archambault, and we had put
21 together a grant to see what are the kinds of
22 visualization layouts that work best for showing
23 someone their social network. That research cannot
24 continue because we cannot see Facebook social

03:32:22

03:32:27

03:32:30

03:32:37

03:32:40

03:32:45

03:32:51

1 Q. And can I also take it that you can't
2 comment on the extent to which at all they did an
3 analysis of the Terms of Service either prior to
4 becoming developers or after becoming a developer?

04:24:25

04:24:28

04:24:31

04:24:34

5 A. Yeah, no, I don't -- no, I don't know of
6 any analysis they did.

04:24:39

04:24:41

7 Q. Okay. Let's look at Exhibit Number 8.
8 This is the Wall Street Journal article that came up
9 in your discussions with counsel for Six4Three and
10 that you testified about earlier today; is that
11 right?

04:24:53

04:24:57

04:25:10

04:25:12

04:25:14

12 A. Yes, ma'am.

04:25:14

13 Q. Okay. And during your testimony, you
14 referenced your belief that Tinder had some sort of
15 agreement with Facebook after the API change. Do
16 you recall that?

04:25:15

04:25:16

04:25:22

04:25:25

17 A. I do recall that.

04:25:26

18 Q. And you testified that your basis for that
19 is this Wall Street Journal article; is that
20 correct?

04:25:27

04:25:28

04:25:31

21 A. Not entirely. It's also my experience on
22 Tinder and my previous understanding of how the API
23 works and what APIs were available or not available
24 that led me to ponder why it was or how it was that

04:25:33

04:25:38

04:25:42

04:25:44

1 Tinder had access to data. This had confirmed for 04:25:49
2 me that the reason or the nature of that access was 04:25:53
3 because of a deal. 04:25:57

4 Q. Okay. So let's take a step back and break 04:25:58
5 that down. When you talk about your experience on 04:26:01
6 Tinder, you're discussing your experience as a user; 04:26:03
7 is that right? 04:26:06

8 A. That is correct. 04:26:07

9 Q. Okay. You don't have any knowledge as to 04:26:07
10 how the Tinder app works, correct? 04:26:09

11 MR. GODKIN: Objection. 04:26:13

12 A. As an expert in the design of social media 04:26:13
13 systems and someone who also publishes on online 04:26:19
14 dating, I have understanding of how apps work. I 04:26:25
15 don't have any factual details about decisions that 04:26:29
16 Tinder have made or have not made. 04:26:34

17 Q. Right. You've never seen the Tinder 04:26:35
18 source code, right? 04:26:38

19 A. No, ma'am. 04:26:39

20 Q. Is that correct? 04:26:40

21 A. That is correct. I have not seen the 04:26:41
22 Tinder source code. 04:26:41

23 Q. You've never talked to anyone at Tinder 04:26:42
24 about whether they have a deal or don't have a deal 04:26:45

1 with Facebook, correct?

04:26:47

2 A. I have not talked to anyone at Tinder
3 about that.

04:26:49

04:26:51

4 Q. You don't have any personal knowledge of
5 any relationship or deal or agreement between Tinder
6 and Facebook, correct?

04:26:51

04:26:54

04:26:57

7 A. My information about Tinder comes -- of a
8 deal between them comes solely from this paragraph.

04:26:59

04:27:02

9 Q. Okay. So all of the information that you
10 have about what you believe to be a deal between
11 Tinder and Facebook comes from the one paragraph of
12 the Wall Street Journal article. You don't have any
13 personal knowledge, correct?

04:27:06

04:27:08

04:27:11

04:27:15

04:27:17

14 A. It's not fair to say that entirely
15 because, again, the mere fact that they can expose
16 friends suggests that they had access to this data.
17 I know that because I have been on the app and have
18 observed that.

04:27:19

04:27:20

04:27:25

04:27:30

04:27:33

19 Q. When was the last time you were on the
20 app?

04:27:35

04:27:37

21 A. Oh, about a year ago.

04:27:37

22 Q. Okay. So my question is -- so in 2016
23 sometime?

04:27:39

04:27:41

24 A. Yes, ma'am.

04:27:41

1 Q. Okay. So my question is not what you 04:27:42
2 observed as a user of Tinder. I understand that you 04:27:45
3 are a user of Tinder -- 04:27:47

4 A. Yeah, I was. 04:27:49

5 Q. -- that's -- or were a user of Tinder. 04:27:49
6 Set that aside for a moment. My question is: Other 04:27:51
7 than what you can see as a user for Tinder and the 04:27:55
8 Wall Street Journal application, you don't have any 04:27:58
9 personal knowledge of anything -- any agreement 04:28:01
10 between Tinder and Facebook; correct? 04:28:04

11 MR. GODKIN: Objection. 04:28:07

12 A. No, I don't have any knowledge of an 04:28:07
13 agreement. All I have is the understanding that 04:28:10
14 there must be some sort of agreement. Otherwise, 04:28:14
15 Tinder would not have that data. 04:28:17

16 Q. You're assuming that they must have an 04:28:21
17 agreement. Otherwise, you wouldn't see what you're 04:28:23
18 seeing on the app. 04:28:25

19 A. I believe that that's a fair assumption. 04:28:26
20 There is no evidence to suggest that Tinder have 04:28:30
21 hacked Facebook because Tinder have used Facebook 04:28:34
22 and have been featured, you know, in Facebook 04:28:39
23 conferences and Facebook materials and vice versa. 04:28:43
24 So insofar as I have been able to observe that 04:28:47

1 Tinder and Facebook seem to get along and that 04:28:52
2 Tinder uses data from Facebook, that there must be 04:28:55
3 some sort of agreement. I am not privy to the 04:29:00
4 nature of that agreement. 04:29:04

5 Q. Okay. Let's focus in on the question, 04:29:05
6 okay? Yes or no; do you have any personal knowledge 04:29:07
7 of any agreement between Tinder and Facebook? 04:29:10

8 A. No. 04:29:14

9 Q. Yes or no; do you have any personal 04:29:18
10 knowledge as to what specific permissions Tinder has 04:29:20
11 or doesn't have from Facebook? 04:29:26

12 A. No. 04:29:29

13 Q. There was a question from Mr. Godkin as to 04:29:36
14 whether or not your app has some sort of agreement 04:29:39
15 with Facebook. Do you recall that? 04:29:44

16 A. Yes, I recall that. 04:29:46

17 Q. And you testified that you have not been 04:29:48
18 approached by Facebook with respect to a special 04:29:49
19 agreement of any kind; is that right? 04:29:54

20 A. Well, I mean, previously -- you know, I 04:29:56
21 mean, Exhibit 6 would suggest that I have been 04:29:59
22 approached about a potential special agreement 04:30:02
23 referred to as the -- some sort of academic API 04:30:06
24 program. But beyond that, I have not been 04:30:10

1 A. Well, I wouldn't say Yale. I mean, if 05:11:28
2 they're a lawyer. 05:11:29

3 Q. Fair, but if somebody went to Yale or 05:11:30
4 another law school, they're going to be in a better 05:11:33
5 position than somebody without legal training, 05:11:34
6 right? 05:11:36

7 MR. GODKIN: Objection. 05:11:38

8 A. Well, if someone is a lawyer, that gives 05:11:39
9 them a certain privileged understanding of this 05:11:39
10 document. 05:11:43

11 Q. Okay. Setting that aside, when you as a 05:11:43
12 developer seek to understand the Facebook terms, you 05:11:49
13 wouldn't elevate paragraph nine or look at paragraph 05:11:51
14 nine in isolation. You'd have to look at all of the 05:11:55
15 terms to get an understanding of what the 05:11:58
16 relationship between the developer and Facebook is, 05:12:00
17 correct? 05:12:02

18 MR. GODKIN: Objection. 05:12:03

19 A. I can say that one cannot look at that 05:12:03
20 paragraph, paragraph nine, in isolation. 05:12:06

21 Q. Okay. Let's look at page -- sorry, 05:12:08
22 Exhibit Number 5. 05:12:10

23 Oh, actually, you know what? Sorry, one 05:12:18
24 more before we get to that. When you signed up as a 05:12:19

1 developer to Facebook, did you believe that you were 05:12:24
2 going to have full access to all of Facebook's user 05:12:27
3 data forever? 05:12:32

4 A. No, I didn't even believe I'd have access 05:12:34
5 to most of Facebook's user data. At first, I didn't 05:12:35
6 know what data I would have access to and that 05:12:41
7 through -- and this is actually relevant to this -- 05:12:44
8 through prototyping and toying around with apps and 05:12:47
9 learning about hidden things like rate limiting, I 05:12:52
10 became more clear about what data was available. 05:12:54
11 But I -- no, I mean, Facebook's data use policies 05:12:57
12 change all the time. Their API's change all the 05:13:01
13 time. So it would totally be fair for me to assume 05:13:03
14 that I did not assume -- it would be totally fair 05:13:06
15 for me to say I did not assume that I would have 05:13:07
16 access to all user data for all time. 05:13:13

17 Q. Okay. And when you first signed up to be 05:13:16
18 a developer for Facebook, did you believe that you 05:13:19
19 would have -- strike that. 05:13:21

20 When you first signed up to be a developer 05:13:22
21 for Facebook, did you believe that whatever set of 05:13:25
22 access or permissions you had at that time, you were 05:13:28
23 going to have forever? Or did you understand that 05:13:30
24 the API was going to change and that the platform 05:13:37

1 would change and that Facebook is going to evolve as 05:13:40
2 a company -- 05:13:42

3 MR. GODKIN: Objection. 05:13:43

4 Q. -- and that your ability to access data 05:13:44
5 might evolve as Facebook does? 05:13:45

6 MR. GODKIN: Objection. 05:13:46

7 A. Well, I don't really like the word 05:13:47
8 "evolve" here. Devolve may be a more accurate word. 05:13:48
9 But I do understand that that would change. 05:13:52
10 Facebook themselves change what's available in the 05:13:53
11 API. 05:13:56

12 However, it's important to distinguish 05:13:57
13 that I think there's some kind of data that's maybe 05:13:58
14 incidental. Facebook, for example, made phone 05:14:03
15 numbers available for one point and then at one 05:14:07
16 point, they didn't. That's different from core 05:14:08
17 functionality. Facebook is a social network site. 05:14:11
18 The movie based on Facebook is called the Social 05:14:15
19 Network. It calls itself a social network. So I 05:14:16
20 had pretty strong understandings that social network 05:14:21
21 data would be consistently available for a long 05:14:26
22 period of time, and I certainly acted under the 05:14:30
23 expectations that such core functionality -- so core 05:14:34
24 that it's in the basic permissions -- would still be 05:14:36

1 available for a long time.

05:14:40

2 Q. Okay. So are you -- so your testimony
3 is -- what you're telling the jury is that when you
4 signed up as a developer for Facebook, you believed
5 that you would have access to the same set of
6 permissions and data in perpetuity.

05:14:42

05:14:43

05:14:47

05:14:49

05:14:52

7 MR. GODKIN: Objection.

05:14:55

8 Q. Yes or no.

05:14:56

9 A. No, I don't think that -- no, I don't
10 think that that's a fair statement.

05:14:56

05:14:57

11 Q. Okay. So --

05:15:00

12 A. No, I don't think that in perpetuity is a
13 fair characterization.

05:15:02

05:15:05

14 Q. Okay.

05:15:06

15 A. I think a fair characterization is that I
16 would have access to core data for certainly a
17 longer time horizon than I was given.

05:15:07

05:15:09

05:15:14

18 Q. Okay. Let me ask the question this way.

05:15:17

19 Yes or no; when you signed up as a developer, did

05:15:18

20 you believe that you were going to have access to

05:15:21

21 the same set of data and permissions in perpetuity?

05:15:23

22 Yes or no.

05:15:25

23 A. No.

05:15:27

24 Q. When you signed as a developer, did you

05:15:31



EXHIBIT 7

Page 1	Page 2
<p>1 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA</p> <p>2 IN AND FOR THE COUNTY OF SAN MATEO</p> <p>3</p> <p>4 SIX4THREE, LLC, a Delaware)</p> <p>5 limited liability company,)</p> <p>6)</p> <p>7 Plaintiff,)</p> <p>8)</p> <p>9 vs.) No. CIV533328</p> <p>10)</p> <p>11)</p> <p>12 FACEBOOK, INC., a Delaware)</p> <p>13 corporation, and DOES 1-50,)</p> <p>14 inclusive,)</p> <p>15)</p> <p>16 Defendants.)</p> <p>17)</p> <p>18)</p> <p>19)</p> <p>20)</p> <p>21)</p> <p>22 REPORTED BY:</p> <p>23 JOHNNA PIPER</p> <p>24 CSR 11268</p> <p>25 Job No. 10029537</p>	<p>1 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA</p> <p>2 IN AND FOR THE COUNTY OF SAN MATEO</p> <p>3</p> <p>4 SIX4THREE, LLC, a Delaware)</p> <p>5 limited liability company,)</p> <p>6)</p> <p>7 Plaintiff,)</p> <p>8)</p> <p>9 vs.) No. CIV533328</p> <p>10)</p> <p>11)</p> <p>12 FACEBOOK, INC., a Delaware)</p> <p>13 corporation and DOES 1-50,)</p> <p>14 inclusive,)</p> <p>15)</p> <p>16 Defendants.)</p> <p>17)</p> <p>18)</p> <p>19)</p> <p>20)</p> <p>21)</p> <p>22)</p> <p>23)</p> <p>24)</p> <p>25)</p> <p>Deposition of TED KRAMER, Volume I, taken on behalf of Defendant, at DURIE TANGRI LLP, 217 Leidesdorff Street, San Francisco, California, beginning at 9:00 a.m. and ending at 5:17 p.m. on Friday, January 13, 2017, before JOHNNA PIPER, Certified Shorthand Reporter No. 11268.</p>
Page 3	Page 4
<p>1 APPEARANCES:</p> <p>2</p> <p>3 For the Plaintiff:</p> <p>4 BIRNBAUM & GODKIN, LLP</p> <p>5 DAVID S. GODKIN, ESQ.</p> <p>6 280 Summer Street</p> <p>7 Boston, Massachusetts 02210</p> <p>8 (617) 307-6100</p> <p>9 godkin@birnbaumgodkin.com</p> <p>10</p> <p>11</p> <p>12 For the Defendant:</p> <p>13 DURIE TANGRI LLP</p> <p>14 LAURA E. MILLER, ESQ.</p> <p>15 CATHERINE Y. KIM, ESQ.</p> <p>16 SONAL N. MEHTA, ESQ.</p> <p>17 217 Leidesdorff Street</p> <p>18 San Francisco, California 94111</p> <p>19 (415) 362-6666</p> <p>20 lmiller@duriatangri.com</p> <p>21</p> <p>22</p> <p>23</p> <p>24 Also Present: David Manzo, videographer.</p> <p>25</p>	<p>1 I N D E X</p> <p>2 WITNESS: TED KRAMER</p> <p>3 EXAMINATION BY: PAGE</p> <p>4 MS. MILLER 9</p> <p>5</p> <p>6</p> <p>7</p> <p>8 EXHIBITS</p> <p>9 NUMBER DESCRIPTION PAGES</p> <p>10 Exhibit 27 E-mail from Facebook to 88</p> <p>11 ted@six4three.com, Bates-stamped</p> <p>12 Six4Three 000000551</p> <p>13 Exhibit 28 E-mail from Thomas Scaramellino to Serge 104</p> <p>14 Belongie, et al., dated April 18, 2013,</p> <p>15 subject: Thoughts for tonight,</p> <p>16 Bates-stamped Six4Three 000000549</p> <p>17</p> <p>18 Exhibit 29 E-mail string beginning with an e-mail 110</p> <p>19 from Ted Kramer, dated June 18, 2013,</p> <p>20 Bates-stamped Six4Three 000000868</p> <p>21 through 70</p> <p>22</p> <p>23 Exhibit 30 E-mail from Thomas Scaramellino to Tim 116</p> <p>24 Gildea, et al., dated June 18, 2013,</p> <p>25 subject: Terms of use & privacy policy,</p> <p>with attachment, Bates-stamped Six4Three</p> <p>000001090 through 110</p> <p>Exhibit 31 Printout of archived website 117</p> <p>pikinis.com</p> <p>Exhibit 32 Template e-mail entitled, "Campus 122</p> <p>Marketing Ambassador," Bates-stamped</p> <p>Six4Three 000001594</p>

<p style="text-align: right;">Page 161</p> <p>1 interest in this type of product.</p> <p>2 Q. Going to the second full paragraph, the</p> <p>3 second sentence reads, "If the app had continued to</p> <p>4 grow at its then current rate, a very modest</p> <p>5 assumption is apps tend to grow more quickly once</p> <p>6 network effects are taken into account, Six4Three</p> <p>7 very soon would have been able to provide unique</p> <p>8 photo contextual intelligence and very large revenue</p> <p>9 streams from organizing, sorting, and mining the</p> <p>10 photos on Facebook."</p> <p>11 The phrase "then current rate," what --</p> <p>12 what does the then current date --</p> <p>13 MR. GODKIN: Rate.</p> <p>14 BY MS. MILLER:</p> <p>15 Q. -- referred to?</p> <p>16 A. To clarify, do you mean rate or date? You</p> <p>17 said --</p> <p>18 Q. Date. What is the date of the then current</p> <p>19 rate referenced in that sentence?</p> <p>20 A. Q3 and Q4 of 2014.</p> <p>21 Q. Six months?</p> <p>22 A. Yes.</p> <p>23 Q. So that would be July through December of</p> <p>24 2014?</p> <p>25 A. I would include up until -- so I will</p>	<p style="text-align: right;">Page 162</p> <p>1 change my statement. I -- I would include up until</p> <p>2 the app ceased to function, so I will say April of</p> <p>3 2015 as well. So we would then go three quarters,</p> <p>4 Q3, Q4, and Q1.</p> <p>5 Q. So if the app had continued to grow at its</p> <p>6 rate over the months of July 2014 through April</p> <p>7 2015, Six4 -- Six4Three would very soon have been</p> <p>8 able to provide unique photo contextual intelligence</p> <p>9 and very large revenue streams from organizing,</p> <p>10 sorting, and mining the photos on Facebook?</p> <p>11 A. Yes.</p> <p>12 Q. Turn to page 27, please.</p> <p>13 And then looking at the third full</p> <p>14 paragraph under subsection B, the first sentence</p> <p>15 reads, "Facebook did not notify Six4Three of the</p> <p>16 shutting down of Graph API and the deprecating of</p> <p>17 the friends photos endpoint until January 20th,</p> <p>18 2015."</p> <p>19 Is that an accurate statement?</p> <p>20 A. Yes.</p> <p>21 Q. And then on the next page in the second</p> <p>22 paragraph, four sentences in, you write, "Facebook</p> <p>23 provided Six4Three with notice of many different</p> <p>24 changes and yet not until January 20th, 2015, did</p> <p>25 Facebook send notice to Six4Three of a change that</p>
<p style="text-align: right;">Page 163</p> <p>1 would cause Six4Three's app to shut down."</p> <p>2 Is that an accurate statement?</p> <p>3 A. Sorry. I apologize. Did you say we're on</p> <p>4 the next page?</p> <p>5 Q. Yes, sorry. Page 28, first full paragraph,</p> <p>6 which starts about halfway down the page, and I'm</p> <p>7 looking at the fourth sentence.</p> <p>8 A. Can you repeat your question?</p> <p>9 Q. Yeah. The -- the statement that "Facebook</p> <p>10 provided Six4Three with notice of many different</p> <p>11 changes and yet not until January 20th, 2015, did</p> <p>12 Facebook send notice to Six4Three of a change that</p> <p>13 would cause Six4Three's app to shut down."</p> <p>14 My question was: Is that an accurate</p> <p>15 statement?</p> <p>16 A. Yes.</p> <p>17 Q. And I won't go through all of them, but</p> <p>18 this is included in several of the interrogatory</p> <p>19 responses.</p> <p>20 So your testimony is that Six4Three was not</p> <p>21 notified of the transition from Graph API Version 1</p> <p>22 to Graph API Version 2 until January 20th, 2015?</p> <p>23 MR. GODKIN: Objection.</p> <p>24 THE WITNESS: No, I did not say that.</p> <p>25 BY MS. MILLER:</p>	<p style="text-align: right;">Page 164</p> <p>1 Q. What is inaccurate about what I just read?</p> <p>2 A. The implications of what that change meant</p> <p>3 were not communicated to us until January 20th,</p> <p>4 2015.</p> <p>5 Q. When did you first become aware that -- or</p> <p>6 Six4Three would have to transition from Graph API</p> <p>7 Version 1 to Graph API Version 2?</p> <p>8 A. I don't remember. It was in 2014.</p> <p>9 Q. Was it in May of 2014?</p> <p>10 A. I don't remember.</p> <p>11 Q. You recall having a conversation with</p> <p>12 Mr. Gildea in May of 2014 regarding the</p> <p>13 transition from Graph API Version 1 to Graph API --</p> <p>14 THE COURT REPORTER: I'm sorry. Can you</p> <p>15 say that again?</p> <p>16 MS. MILLER: Sorry.</p> <p>17 Q. Do you remember -- do you recall a</p> <p>18 conversation with Mr. Gildea in May 2014 regarding</p> <p>19 the transition of Graph API Version 1 to Graph API</p> <p>20 Version 2?</p> <p>21 A. I don't remember.</p> <p>22 Q. Do you recall -- so you -- you have no</p> <p>23 memory of when -- between May 2014 and January of</p> <p>24 2015 when you first learned of the transition to</p> <p>25 Graph API Version 2?</p>

<p style="text-align: right;">Page 181</p> <p>1 point approved the Pikinis app, correct?</p> <p>2 A. Correct.</p> <p>3 Q. When did Six4Three submit the Pikinis app</p> <p>4 for approval?</p> <p>5 A. I don't remember.</p> <p>6 Q. Was it before announce -- before or after</p> <p>7 the announcement that Facebook was transitioning</p> <p>8 from Graph API Version 1 to Graph API Version 2?</p> <p>9 A. I don't remember.</p> <p>10 Q. Do you know what the approval process</p> <p>11 entailed?</p> <p>12 A. No. I left that to Mr. Gildea.</p> <p>13 Q. Mr. Gildea submitted the Six4Three app to</p> <p>14 Facebook for approval?</p> <p>15 A. Correct.</p> <p>16 Q. Please look at Exhibit 47.</p> <p>17 And I want to direct your attention to Form</p> <p>18 Interrogatory Number 8.4.</p> <p>19 MR. GODKIN: You better stop, because 47 is</p> <p>20 just the verification.</p> <p>21 MS. MILLER: Thank you.</p> <p>22 45. My apologies. Exhibit 45.</p> <p>23 Q. And it's Form Interrogatory 8.4. And in</p> <p>24 the first supplemental response on page 7 Six4Three</p> <p>25 says that as of April 30th, 2015, 4,481 users had</p>	<p style="text-align: right;">Page 182</p> <p>1 downloaded the Pikinis app of whom 3,963 had</p> <p>2 subscriptions to premium contents.</p> <p>3 Do you see that?</p> <p>4 A. Sorry. Where are you seeing the date?</p> <p>5 Q. Oh, I was -- it was at the time Facebook</p> <p>6 ended access to the friends photos endpoint, which I</p> <p>7 think we've established is April 30th, 2015.</p> <p>8 A. I apologize. The supplemental response or</p> <p>9 the second supplemental response?</p> <p>10 Q. The supplemental response on page 7.</p> <p>11 MR. GODKIN: Could you read the question</p> <p>12 back? I'm not sure I remember what it was.</p> <p>13 MS. MILLER: Yes.</p> <p>14 Q. In the first supplemental response on</p> <p>15 page 7 Six4Three states that as of April 30th, 2015,</p> <p>16 4,481 users had downloaded the app of whom 3,963 had</p> <p>17 subscriptions to premium content.</p> <p>18 That's a correct statement? And I -- I'm</p> <p>19 not actually trying to -- I'm not trying to trip you</p> <p>20 up with -- I know the numbers have shifted a little</p> <p>21 bit, but I read that accurately?</p> <p>22 A. Yes.</p> <p>23 Q. And then it goes on to say that, "Six4Three</p> <p>24 further notes that with its then existing user base</p> <p>25 at the time Six4Three ceased operations and with</p>
<p style="text-align: right;">Page 183</p> <p>1 absolutely no further growth in user base, product</p> <p>2 development, or the additional monetization</p> <p>3 Six4Three had planned, Six4Three would have obtained</p> <p>4 profits amounting to 1.149569 dollars." We'll call</p> <p>5 it \$1.15 million.</p> <p>6 THE COURT REPORTER: I'm sorry. One point?</p> <p>7 MS. MILLER: One-five.</p> <p>8 Q. Do you see that?</p> <p>9 A. Correct.</p> <p>10 Q. How did you derive that number?</p> <p>11 A. In work with my investor, Mr. Scaramellino,</p> <p>12 we put together a financial model based on our</p> <p>13 previous results and existing user growth.</p> <p>14 Q. So here you're saying, though, that this</p> <p>15 number is based on no growth, correct?</p> <p>16 It's -- it's -- my understanding of this,</p> <p>17 and tell me if I'm wrong, is that if Six4Three had</p> <p>18 4,481 users for two years and no more, 3 -- 3,963 of</p> <p>19 whom had subscriptions to premium content, it would</p> <p>20 have profits of \$1.15 million over a two-year</p> <p>21 period?</p> <p>22 A. Correct.</p> <p>23 MR. GODKIN: Object -- go ahead.</p> <p>24 BY MS. MILLER:</p> <p>25 Q. And so once a user had downloaded the app,</p>	<p style="text-align: right;">Page 184</p> <p>1 they didn't generate any additional revenue for</p> <p>2 Six4Three unless they bought premium subscription</p> <p>3 service, right?</p> <p>4 A. Correct.</p> <p>5 Q. And so if we round up the 3,963 to 4,000</p> <p>6 and multiply that by 48 months and \$2 per month for</p> <p>7 premium subscription -- and let's just call -- call</p> <p>8 it 50 months so that we have it -- it's -- it's --</p> <p>9 it's -- the numbers are --</p> <p>10 MR. GODKIN: I take it you weren't a math</p> <p>11 major.</p> <p>12 BY MS. MILLER:</p> <p>13 Q. So the numbers are easier, we'll say 4,000</p> <p>14 users at \$2 per month over 50 months. That's</p> <p>15 \$400,000.</p> <p>16 How do you get to 1.15?</p> <p>17 MR. GODKIN: Objection.</p> <p>18 THE WITNESS: I would have to look at the</p> <p>19 model that we presented.</p> <p>20 BY MS. MILLER:</p> <p>21 Q. You would agree with me, though, that based</p> <p>22 solely on \$2 per month per user over 48 months, you</p> <p>23 cannot get to \$1.15 million?</p> <p>24 MR. GODKIN: Objection.</p> <p>25 THE WITNESS: No, I don't.</p>

<p style="text-align: right;">Page 193</p> <p>1 for Six4Three?</p> <p>2 MR. GODKIN: Objection.</p> <p>3 THE WITNESS: Can you repeat your question?</p> <p>4 BY MS. MILLER:</p> <p>5 Q. Let me rephrase it.</p> <p>6 Sitting here today, you can't point me to a</p> <p>7 single other document other than Exhibits L and M</p> <p>8 that include information as to whether Six4Three had</p> <p>9 any actual sales of the Pikinis app?</p> <p>10 MR. GODKIN: Objection.</p> <p>11 THE WITNESS: To clarify your question,</p> <p>12 you're saying that only these two exhibits are the</p> <p>13 only examples of Pikinis generating revenue?</p> <p>14 BY MS. MILLER:</p> <p>15 Q. That provide data of -- that show Pikinis</p> <p>16 generating revenue, yes.</p> <p>17 A. No.</p> <p>18 Q. I got a little muddled so I just want to be</p> <p>19 clear. Other than these two exhibits, are there any</p> <p>20 other documents that show actual sales of the</p> <p>21 Pikinis app?</p> <p>22 A. There are transaction records between Apple</p> <p>23 depositing money into our bank account that</p> <p>24 demonstrate sales.</p> <p>25 Q. And you would be able to see that from bank</p>	<p style="text-align: right;">Page 194</p> <p>1 statements?</p> <p>2 A. Correct.</p> <p>3 Q. Can I have you look at Exhibit K, please?</p> <p>4 What is Exhibit K?</p> <p>5 A. It appears to be metrics for in-app</p> <p>6 subscriptions as well as the app download.</p> <p>7 Q. Do you know where this came from?</p> <p>8 A. The Apple developer -- iTunes developer</p> <p>9 website.</p> <p>10 THE COURT REPORTER: I'm sorry. Developer?</p> <p>11 THE WITNESS: Website.</p> <p>12 THE COURT REPORTER: Thank you.</p> <p>13 BY MS. MILLER:</p> <p>14 Q. If you look back at rog Number 20 and</p> <p>15 Six4Three's -- third supplemental response. I'm</p> <p>16 looking at page 56, the first full paragraph.</p> <p>17 The first sentence reads, "Six4Three was</p> <p>18 able to identify a screenshot in its files, though</p> <p>19 it cannot accurately identify the specific date of</p> <p>20 the screenshot from its prior access of Apple's</p> <p>21 developer website."</p> <p>22 Did you generate this screenshot?</p> <p>23 A. I don't remember.</p> <p>24 Q. Did you provide this screenshot to counsel</p> <p>25 to produce to us in this case?</p>
<p style="text-align: right;">Page 195</p> <p>1 A. I don't remember. It could have come from</p> <p>2 myself or Mr. Gildea.</p> <p>3 Q. Is there anyone else this could have come</p> <p>4 from?</p> <p>5 A. No.</p> <p>6 Q. If you flip to page 80, you'll see these</p> <p>7 responses were served on December 27th, 2016, so</p> <p>8 about three weeks ago. You can't remember three</p> <p>9 weeks ago whether or not you provided this</p> <p>10 screenshot to counsel?</p> <p>11 A. I'm saying I can't remember when this</p> <p>12 screenshot was provided to counsel.</p> <p>13 Q. Did you provide the screenshot to counsel?</p> <p>14 A. As I said, I don't remember.</p> <p>15 Q. Did you take the screenshot?</p> <p>16 A. I don't remember.</p> <p>17 Q. And if Mr. Gildea says that he did not do</p> <p>18 this, does that mean it necessarily was you?</p> <p>19 MR. GODKIN: Objection.</p> <p>20 THE WITNESS: Potentially, yes.</p> <p>21 BY MS. MILLER:</p> <p>22 Q. Is it possible that Mr. Scaramellino took</p> <p>23 this screenshot?</p> <p>24 A. No.</p> <p>25 Q. All right. This screenshot shows 4,320</p>	<p style="text-align: right;">Page 196</p> <p>1 basic app downloads, 140 one-month app</p> <p>2 subscriptions, 14 six-month app subscriptions, and 7</p> <p>3 one-year app subscriptions. This formed the basis</p> <p>4 of Six4Three's original claim of a total of 4,481</p> <p>5 downloads, correct?</p> <p>6 A. Correct.</p> <p>7 Q. And Six4Three believes that this</p> <p>8 information is accurate?</p> <p>9 A. Yes.</p> <p>10 Q. So the 4,320 -- sorry. Strike that.</p> <p>11 Of the 4,320 -- start over.</p> <p>12 Of the 4,481 downloads, only 140 of those</p> <p>13 were one-month subscriptions?</p> <p>14 A. As per the document, yes.</p> <p>15 Q. And you believe that's accurate?</p> <p>16 A. Yes.</p> <p>17 Q. And we were discussing this. Apple doesn't</p> <p>18 allow you to do recurring one-month subscriptions.</p> <p>19 Do you know how many people paid for the second</p> <p>20 month?</p> <p>21 A. I do not.</p> <p>22 Q. Do you have any way of determining that?</p> <p>23 A. I don't believe so.</p> <p>24 Q. And you have no way of determining whether</p> <p>25 or not the basic app download was a paid download,</p>

<p style="text-align: right;">Page 205</p> <p>1 THE WITNESS: I read this as the</p> <p>2 1.15 million is the sum of capital and uncompensated</p> <p>3 labor.</p> <p>4 BY MS. MILLER:</p> <p>5 Q. Expended by Six4Three and its team members?</p> <p>6 A. Correct.</p> <p>7 Q. And you believe that that's accurate?</p> <p>8 A. Yes.</p> <p>9 Q. How was that number calculated?</p> <p>10 A. In work put together by myself and counsel</p> <p>11 to determine the damages caused by the shutdown of</p> <p>12 our app and our business.</p> <p>13 Q. What was the nature of that work?</p> <p>14 A. Providing the amount of capital that we</p> <p>15 invested as well as the amount of time that we</p> <p>16 invested.</p> <p>17 Q. What was the capital that Six4Three</p> <p>18 invested?</p> <p>19 A. As I previously had stated, around</p> <p>20 \$250,000.</p> <p>21 Excuse me. I -- I revise that. \$250,000</p> <p>22 was the investment. I can't remember how much of</p> <p>23 that capital we had spent.</p> <p>24 Q. So less than \$250,000 in capital?</p> <p>25 A. Correct.</p>	<p style="text-align: right;">Page 206</p> <p>1 Q. And so the uncompensated labor expended by</p> <p>2 Six4Three was over \$900,000?</p> <p>3 A. Yes.</p> <p>4 Q. How do you determine that number?</p> <p>5 A. I don't have that information in front of</p> <p>6 me.</p> <p>7 Q. You can't tell me even the method that you</p> <p>8 used to determine that number?</p> <p>9 A. I need the information in front of me.</p> <p>10 Q. What information?</p> <p>11 A. The model that we built to approximate our</p> <p>12 damages.</p> <p>13 Q. Is that different than the business model</p> <p>14 that you worked on with Mr. Scaramellino?</p> <p>15 A. Yes.</p> <p>16 Q. And you can't recall what information went</p> <p>17 into the model to determine over \$900,000 in</p> <p>18 uncompensated labor?</p> <p>19 A. At the moment, no.</p> <p>20 Q. How much uncompensated labor did you</p> <p>21 provide to Six4Three?</p> <p>22 A. Almost two and a half years' worth.</p> <p>23 Q. How much was that worth?</p> <p>24 A. Hundreds of thousands of dollars.</p> <p>25 Q. Did Mr. Scaramellino's work for Six4Three</p>
<p style="text-align: right;">Page 207</p> <p>1 go into calculating the -- the 1.15 million in</p> <p>2 capital and uncompensated labor?</p> <p>3 A. I can't remember.</p> <p>4 Q. Did Mr. Belongie's?</p> <p>5 A. I can't remember.</p> <p>6 Q. Did Mr. Mahoney's?</p> <p>7 A. I can't remember.</p> <p>8 Q. And Mr. Gildea and Mr. Reiter were</p> <p>9 compensated for their labor for Six4Three, correct?</p> <p>10 A. Yes.</p> <p>11 Q. So their -- their -- their labor would not</p> <p>12 have gone into that calculation?</p> <p>13 MR. GODKIN: Objection.</p> <p>14 THE WITNESS: I can't remember.</p> <p>15 BY MS. MILLER:</p> <p>16 Q. You have a full-time job right now,</p> <p>17 correct?</p> <p>18 A. Correct.</p> <p>19 Q. What's your yearly salary?</p> <p>20 A. I make \$120,000 a year.</p> <p>21 Q. And so -- how much did you make at WeWork?</p> <p>22 MR. GODKIN: Objection.</p> <p>23 THE WITNESS: Around a hundred thousand</p> <p>24 dollars a year.</p> <p>25 BY MS. MILLER:</p>	<p style="text-align: right;">Page 208</p> <p>1 Q. And you're -- those were full-time jobs?</p> <p>2 A. Correct.</p> <p>3 Q. And you were working ten to twenty hours a</p> <p>4 week for Six4Three?</p> <p>5 A. Correct.</p> <p>6 Q. And you think your -- the value of your</p> <p>7 labor was hundreds of thousands of dollars over two</p> <p>8 and a half years for ten to twenty hours per week?</p> <p>9 A. Correct.</p> <p>10 Q. What is the form of the model that you used</p> <p>11 to come up with this number, the 1.15 million in</p> <p>12 capital and uncompensated labor?</p> <p>13 MR. GODKIN: Objection.</p> <p>14 THE WITNESS: I can't remember.</p> <p>15 BY MS. MILLER:</p> <p>16 Q. Is it in a spreadsheet?</p> <p>17 A. Yes.</p> <p>18 I apologize. I didn't understand what you</p> <p>19 meant by form.</p> <p>20 Q. Fair enough.</p> <p>21 Who prepared that spreadsheet?</p> <p>22 A. Myself and Mr. Scaramellino.</p> <p>23 Q. When did you prepare that spreadsheet?</p> <p>24 A. I don't remember. Prior to us filing this</p> <p>25 complaint.</p>

<p style="text-align: right;">Page 221</p> <p>1 August 2014 is when we were offering free downloads?</p> <p>2 Q. That period of time included offers of free</p> <p>3 downloads, correct?</p> <p>4 A. It included free downloads, but it did not</p> <p>5 -- I can't remember if there were -- if it also</p> <p>6 included paid downloads. I believe it included paid</p> <p>7 downloads too.</p> <p>8 Q. But you're not sure?</p> <p>9 A. I'm not sure on either side of the</p> <p>10 question.</p> <p>11 Q. And you can't determine how many of the</p> <p>12 downloads were paid downloads and how many were free</p> <p>13 downloads, correct?</p> <p>14 A. I'm of the belief no, that we cannot.</p> <p>15 Q. If you move down to the subscription</p> <p>16 revenue assumptions. Do you know where these</p> <p>17 numbers came from?</p> <p>18 Actually -- and I'll point you to the</p> <p>19 assumption notes on the far right-hand side.</p> <p>20 A. I do not.</p> <p>21 Q. It says that this was based on the data</p> <p>22 from the actual subscriptions from July 16th through</p> <p>23 August 31st.</p> <p>24 A. That's three of -- three of four of the</p> <p>25 assumptions.</p>	<p style="text-align: right;">Page 222</p> <p>1 Q. Correct. And the -- the other one is</p> <p>2 August 22nd to September 30th, 2014?</p> <p>3 A. That's correct.</p> <p>4 Q. And you have no way of determining whether</p> <p>5 or not those subscriptions were paid subscriptions,</p> <p>6 correct?</p> <p>7 A. I personally do not.</p> <p>8 Q. And, in fact, the rates, based on the</p> <p>9 information we have from the iTunes data, is quite a</p> <p>10 bit lower than that for paid subscriptions?</p> <p>11 MR. GODKIN: Objection.</p> <p>12 THE WITNESS: They're not comparing the</p> <p>13 same period, though.</p> <p>14 BY MS. MILLER:</p> <p>15 Q. The Apple numbers, as I understand them,</p> <p>16 cover the entire period that Pikinis was available.</p> <p>17 A. Correct, but this assumption does not cover</p> <p>18 the entire period.</p> <p>19 Q. Correct. It's much higher. And this was</p> <p>20 the period when Pikinis was being offered for free,</p> <p>21 including premium services for free.</p> <p>22 A. Correct. It was also a period, though,</p> <p>23 where we were marketing the app.</p> <p>24 Q. Did you market the app after August 31st?</p> <p>25 A. I believe so, yes.</p>
<p style="text-align: right;">Page 223</p> <p>1 Q. What's that?</p> <p>2 A. I believe so, yes.</p> <p>3 Q. When did you stop marketing the app?</p> <p>4 A. I don't remember how long our Facebook ad</p> <p>5 campaign lasted.</p> <p>6 Q. Why did you stop marketing the ad?</p> <p>7 A. Based on our understanding, we were unsure</p> <p>8 if our app would continue to function.</p> <p>9 Q. That was in January of 2015?</p> <p>10 A. No. We knew in January of 2015 that our</p> <p>11 app would not function. We knew in August and</p> <p>12 September that we needed to look into if our app</p> <p>13 would function. So we decided not to allocate more</p> <p>14 capital towards marketing something that potentially</p> <p>15 could not exist.</p> <p>16 Q. It took you from August of 2014 until</p> <p>17 January of 2015 to determine that your app could no</p> <p>18 longer exist?</p> <p>19 MR. GODKIN: Objection.</p> <p>20 THE WITNESS: We didn't know until we were</p> <p>21 told directly by Facebook.</p> <p>22 BY MS. MILLER:</p> <p>23 Q. But you knew enough to stop marketing in</p> <p>24 August of 2014?</p> <p>25 MR. GODKIN: Objection.</p>	<p style="text-align: right;">Page 224</p> <p>1 THE WITNESS: We knew we needed to conserve</p> <p>2 our capital for the future of the business.</p> <p>3 BY MS. MILLER:</p> <p>4 Q. What did -- what did Six4Three do between</p> <p>5 August 2014 and January 2015?</p> <p>6 A. We continued to monitor the app's organic</p> <p>7 growth and look into how we were going to be</p> <p>8 affected by the changes.</p> <p>9 Q. I think I previously asked you a question,</p> <p>10 you have no way of determining whether or not the</p> <p>11 paid -- the subscriptions listed in this chart were</p> <p>12 paid subscriptions, correct? And you answered, I</p> <p>13 personally do not.</p> <p>14 Is there anyone at Six4Three who knows who</p> <p>15 those -- who -- whether or not the subscriptions</p> <p>16 were paid subscriptions?</p> <p>17 A. I don't know.</p> <p>18 Q. Who would possibly know that at Six4Three?</p> <p>19 A. Potentially Mr. Gildea.</p> <p>20 Q. Anyone else?</p> <p>21 A. I don't know.</p> <p>22 Q. Would Mr. Scaramellino know?</p> <p>23 A. I don't know.</p> <p>24 Q. I would have to ask him?</p> <p>25 A. Correct.</p>

EXHIBIT 8

Page 1				Page 2			
1	SUPERIOR COURT OF THE STATE OF CALIFORNIA			1	A P P E A R A N C E S		
2	COUNTY OF SAN MATEO			2			
3				3	For the Plaintiffs:		
4	SIX4THREE, LLC, a Delaware	:		4	James Kruzer		
5	limited liability company,		Case No. CIV 533328	5	BIRNBAUM & GODKIN, LLP		
6	Plaintiff,	:		6	280 Summer Street		
7	-v-	:		7	Boston, Massachusetts 02210		
8	FACEBOOK, INC., a Delaware	:		8	617.307.6100		
9	corporation and DOES 1-50,	:		9	Kruzer@birnbaumgodkin.com		
10	inclusive,	:		10	For the Defendant:		
11	Defendant.	:		11	Laura E. Miller		
12				12	DURIE TANGRI, LLP		
13				13	217 Leidesdorff Street		
14				14	San Francisco, California 94111		
15				15	415.362.6666		
16				16	Lmiller@durietangri.com		
17				17			
18				18	Also Present:		
19				19			
20				20	Lance Harrison, videographer		
21				21			
22				22			
23				23			
24				24			
25				25			
Reported By:							
Vickie Larsen, CSR/RMR							
Job No.: 10029536							
CONFIDENTIAL							
Videotaped Deposition of:							
TIMOTHY GILDEA							
REGUS PLC							
136 East South Temple							
Suite 1400							
Salt Lake City, Utah 84111							
January 10, 2017							
9:07 a.m.							

<p style="text-align: right;">Page 113</p> <p>1 average, you probably exchanged two to three e-mails 2 with Mr. Kramer a week; is that right? 3 A. I -- I really don't know, but that seems 4 right. 5 Q. How about with Mr. Scaramellino related 6 to Six4Three and Pikinis? 7 A. Similar. Maybe one or two e-mails a 8 week. 9 Q. Did you stay in fairly consistent contact 10 with Mr. Scaramellino regarding Six4Three from 11 December 12th through July 2014? 12 A. We talked regularly, yeah. 13 Q. And Mr. Scaramellino is based in Boston; 14 is that right? 15 A. He is now based in Boston, that's right. 16 Q. Did you do anything to prepare for 17 today's deposition? 18 A. I met with my counsel. 19 Q. That's Mr. Kruzer? 20 A. Yes. 21 Q. When did you meet with Mr. Kruzer? 22 A. I met with him on the previous Friday, as 23 well as yesterday afternoon. 24 Q. About how long did you meet with 25 Mr. Kruzer?</p>	<p style="text-align: right;">Page 114</p> <p>1 A. I would say it was about an hour to an 2 hour and a half. The first meeting was maybe a little 3 -- yeah, about an hour. And our meeting yesterday was 4 about an hour and a half. 5 Q. Did you talk to anybody else about -- 6 have you talked to anybody else about this case? 7 A. There were -- for our first meeting, 8 there were other individuals present at the meeting. 9 Q. Who was present? 10 A. Mr. -- Mr. Kramer, Mr. Scaramellino, 11 Mr. Godkin, I believe. And I think that was everyone. 12 Q. And that was the meeting on Friday -- 13 A. That's right. 14 Q. -- last Friday? 15 Was that an in-person meeting? 16 A. It was a telephone meeting. 17 Q. Before last Friday had you talked to 18 Mr. Kramer about this case? 19 A. Yeah, we -- we've discussed the case. 20 Q. And I don't want you to tell me anything 21 that you discussed in the presence of attorneys, but 22 did you ever have conversations about this case 23 outside the presence of attorneys? 24 A. I don't believe so. 25 Q. What about with Mr. Scaramellino?</p>
<p style="text-align: right;">Page 115</p> <p>1 A. No, I don't think so. 2 Q. Did you review any documents in 3 preparation for this deposition? 4 A. I reviewed the -- the documents that I 5 had turned over so that I was familiar with them. 6 Q. Anything else? 7 A. No. 8 Q. Are you being compensated for your time 9 today? 10 A. I'm not. 11 Q. Okay. Going back to the Facebook 12 Platform, when did you first hear about the Facebook 13 Platform? 14 A. I was aware of it for many years prior to 15 my involvement with Six4Three. I really can't say 16 when I first became aware of it. 17 Q. Do you think you would have heard about 18 it in 2007 when it first launched? 19 A. It's very likely, yeah. 20 Q. That was the year that you graduated from 21 college? 22 A. That's right. 23 Q. Do you know what F8 is? 24 A. Yes. 25 Q. What is it?</p>	<p style="text-align: right;">Page 116</p> <p>1 A. It is the Facebook developer conference. 2 Q. Have you ever attended F8? 3 A. No, I haven't. 4 Q. Have you ever watched any of the online 5 videos of an F8 presentation? 6 A. I don't believe so. I may have watched 7 the -- the video of the -- I think it was the 2014 F8, 8 the Graph API 2.0 changes. Didn't watch it live and 9 I'm not sure at what time I might have watched it. So 10 I can't say that I definitively did or didn't. 11 Q. I guess what's your best guess in terms 12 of whether or not you've seen it or not? 13 MR. KRUSER: Objection. 14 THE WITNESS: I would guess that I have 15 -- have not watched it in its entirety. I did read 16 materials related to the announcements. 17 Q. BY MS. MILLER: When did you read those 18 materials? 19 A. I believe I read them in late May of that 20 year. 21 Q. And what materials were those? 22 A. I recall a -- a blog post that was posted 23 on the Facebook developer site, and I recall reading 24 some API documentation. 25 Q. Stepping back, when did you first hear</p>

<p style="text-align: right;">Page 117</p> <p>1 about the Facebook Graph API?</p> <p>2 A. I'm not sure.</p> <p>3 Q. You're not sure?</p> <p>4 Do you recall when you were first aware</p> <p>5 that Facebook had opened up certain data endpoints,</p> <p>6 including the friends data endpoints?</p> <p>7 A. No, I don't know, you know, specifically</p> <p>8 when I became aware of that. I know it was prior to</p> <p>9 my involvement in Six4Three, but I don't have an exact</p> <p>10 date.</p> <p>11 Q. Do you know why you might have become</p> <p>12 aware of Graph API?</p> <p>13 A. It was a pretty common thing in the</p> <p>14 developer community, so it was something that just</p> <p>15 about everyone who was developing applications was</p> <p>16 aware of.</p> <p>17 Q. When you heard about Facebook Graph API,</p> <p>18 did you understand that it would be periodically</p> <p>19 updated?</p> <p>20 A. Yes.</p> <p>21 Q. And as with virtually all software, that</p> <p>22 update would involve a new version number?</p> <p>23 A. Yes.</p> <p>24 Q. When did you first use the Facebook</p> <p>25 Platform SDK?</p>	<p style="text-align: right;">Page 118</p> <p>1 A. I believe the first time I used that --</p> <p>2 well, it -- it may have been in, you know, December of</p> <p>3 2012 with my work on -- with Six4Three. I can't</p> <p>4 remember specifically using it prior to that, but I --</p> <p>5 I can't rule it out.</p> <p>6 Q. And that was the IOS version of the SDK?</p> <p>7 A. I believe at that time I was working</p> <p>8 specifically with the -- the rest API, and my work</p> <p>9 with the IOS SDK began later.</p> <p>10 Q. And what is the rest SDK?</p> <p>11 A. I don't know that there's specifically an</p> <p>12 SDK, but there's an API --</p> <p>13 Q. I'm sorry --</p> <p>14 A. -- available that you can interact with</p> <p>15 via HEP.</p> <p>16 Q. When you were developing the Pikinis app,</p> <p>17 how did you stay informed regarding changes to the</p> <p>18 Facebook Platform?</p> <p>19 A. I received messages periodically about</p> <p>20 breaking changes to the API, none of which affected</p> <p>21 our application during the time I was developing it</p> <p>22 until, you know, after the application had been</p> <p>23 launched.</p> <p>24 Q. Other than receiving messages, did you do</p> <p>25 anything else, such as go to the developer's website?</p>
<p style="text-align: right;">Page 119</p> <p>1 A. I did. When I learned of the changes to</p> <p>2 the log-in process, I went to the developer website to</p> <p>3 familiarize myself with those changes.</p> <p>4 Q. And those log-in changes --</p> <p>5 A. That's right.</p> <p>6 Q. -- were part of the Graph API Version 2;</p> <p>7 correct?</p> <p>8 A. That's right, yeah.</p> <p>9 Q. And that -- that change was announced in</p> <p>10 -- on April 30, 2014?</p> <p>11 A. Yes.</p> <p>12 MR. KRUZER: Objection.</p> <p>13 THE WITNESS: That's my understanding.</p> <p>14 It was sometime after that that I actually</p> <p>15 familiarized myself with the change that had been</p> <p>16 announced.</p> <p>17 Q. BY MS. MILLER: Do you know how you</p> <p>18 became aware that changes had been announced?</p> <p>19 A. I don't remember.</p> <p>20 Q. Other than following this announcement,</p> <p>21 had you otherwise reviewed the Facebook developer's</p> <p>22 web page?</p> <p>23 A. I would look at the documentation</p> <p>24 regularly in the course of my work in software</p> <p>25 development.</p>	<p style="text-align: right;">Page 120</p> <p>1 Q. How often?</p> <p>2 A. It would depend on the nature of the work</p> <p>3 I was doing. You know, during times that I was</p> <p>4 working directly with the Facebook API I would refer</p> <p>5 to it frequently. You know, maybe every day. But</p> <p>6 once I had become aware and comfortable with the</p> <p>7 functionality, I no longer needed to look at the site.</p> <p>8 Q. Did you ever speak with other developers</p> <p>9 about the Facebook Platform from -- let's cabin this</p> <p>10 to December 2012 through July 2014.</p> <p>11 A. I recall reading information from other</p> <p>12 developers. I'm not sure that I had actual</p> <p>13 conversations with -- with other developers.</p> <p>14 Q. And since July of 2014 have you had any</p> <p>15 conversations with other Facebook developers about the</p> <p>16 Facebook Platform?</p> <p>17 A. Not personally, no.</p> <p>18 Q. And in the -- I think you said May 2014</p> <p>19 time period when you went to the developer's website</p> <p>20 to read about Graph API Version 2, what did you find</p> <p>21 out about Graph API?</p> <p>22 A. As I recall, the -- the announcement</p> <p>23 focused on the changes to log in, which I knew would</p> <p>24 require some updates to our application. I didn't see</p> <p>25 anything that was very serious. It looked like it</p>

EXHIBIT 9

Page 1			Page 2		
1	SUPERIOR COURT OF THE STATE OF CALIFORNIA		1	APPEARANCES	
2	COUNTY OF SAN MATEO		2	On Behalf of the Plaintiff:	
3	- - - - - x		3	By: David S. Godkin, Esquire	
4	SIX4THREE,		4	BIRNBAUM & GODKIN, LLP	
5	Plaintiff,		5	280 Summer Street	
6	V. Case No. CIV 533328		6	Boston, MA 02210	
7	FACEBOOK, INC, a Delaware		7	617-307-6100	
8	corporation, and Does 1 - 50,		8	dgodkin@birnbaumgodkin.com	
9	inclusive,		9		
10	Defendants.		10	On Behalf of the Defendants:	
11	- - - - - x		11	By: Sonal N. Mehta, Esquire	
12	VIDEOTAPED DEPOSITION OF		12	DURIE TANGRI, LLP	
13	THOMAS SCARAMELLINO		13	217 Leidesdorff Street	
14			14	San Francisco, CA 94111	
15	April 21, 2017		15	415-362-6666	
16	9:10 a.m.		16	smehta@durietangri.com	
17			17		
18	Conn Kavanaugh Rosenthal Peisch & Ford, LLP		18	Also present:	
19	Ten Post Office Square		19	Alex Daunais, Videographer	
20	Boston, Massachusetts		20		
21			21		
22			22		
23	Reported By:		23		
24	Rosemary F. Grogan,		24		
25	RPR, CSR No. 112993		25		
26	Job No. 10031574				
Page 3			Page 4		
1	INDEX OF EXAMINATION		1	INDEX TO EXHIBITS	
2	WITNESS: THOMAS SCARAMELLINO		2	NUMBER DESCRIPTION PAGE NO.	
3	EXAMINATION PAGE NO.		3	Exhibit 64 E-mail 7/19/13 180	
4	By Ms. Mehta 6		4	Six4Three 00000635	
5			5	Exhibit 65 Facebook Platform Policies 186	
6	INDEX TO EXHIBITS		6	Exhibit 66 Facebook Statement of Rights 187	
7	NUMBER DESCRIPTION PAGE NO.		7	and Responsibilities, etc.	
8	Exhibit 55 Notice of Subpoenas and 10		8	Exhibit 67 Facebook Statement of Rights 187	
9	Attachments		9	and Responsibilities, etc.	
10	Exhibit 56 Certificate of Formation of 70		10	Exhibit 68 E-mail String 7/18/14 206	
11	Limited Liability Company		11	Bates Six4Three 000000892 - 97	
12	Bates Six4Three 000015377 - 15424		12	Exhibit 69 E-mail 5/19/14 227	
13	Exhibit 57 E-mail 4/18/13 96		13	Bates Six4Three 00000641	
14	Bates Six4Three 00000000549		14	Exhibit 70 Facebook Platform Changelog 235	
15	Exhibit 58 E-mail String 6/18/13 122		15	Exhibit 71 E-mail 7/28/14 239	
16	Bates Six4Three 000000864 - 867		16	Bates Six4Three 00000004	
17	Exhibit 59 E-mail 6/18/13 and Attachment 138		17	Exhibit 72 E-mail String 10/16/14 241	
18	Bates Six4Three 000001090 - 110		18	Bates TS_000001	
19	Exhibit 60 Website Terms of Use - Essess 155		19	Exhibit 73 Plaintiff Six4Three LLC's Second 253	
20	Exhibit 61 BroBible Document 161		20	Supplemental Response to Defendant	
21	Exhibit 62 E-mail 7/17/14 165		21	Facebook, Inc.'s Form Interrogatories	
22	Bates Six4Three 00000368		22	Exhibit 74 Plaintiff Six4Three LLC's Response 264	
23	Exhibit 63 Pikinis Testers Feedback 171		23	to Defendant Facebook, Inc.'s	
24	Six4Three 0000001598 - 617		24	Specially Prepared Interrogatories	
25			25	(Set Three)	

<p style="text-align: right;">Page 197</p> <p>1 like it was right around the same time.</p> <p>2 And so sitting here today, it is not</p> <p>3 clear to me which of these two versions was operative at</p> <p>4 the time that we made our decision.</p> <p>5 Q. I see. But it would have been either</p> <p>6 Exhibit 66 or Exhibit 67?</p> <p>7 A. Correct. It's one of the two.</p> <p>8 Q. Okay. And the provisions that we talked about</p> <p>9 relating to the special provisions applicable --</p> <p>10 applicable to developers/operators of applications and</p> <p>11 Web sites, in paragraph No. 2, in terms of access and</p> <p>12 use of data, that exists in both versions, right?</p> <p>13 MR. GODKIN: Objection.</p> <p>14 A. Can you show me which --</p> <p>15 Q. Yes.</p> <p>16 A. -- which one you're talking about again?</p> <p>17 Q. Exhibit 66, page 3 of 7.</p> <p>18 A. All right.</p> <p>19 Q. And then Exhibit 67. That's on page 3 of 7 as</p> <p>20 well.</p> <p>21 A. You're asking about the special provisions</p> <p>22 section?</p> <p>23 Q. That's right.</p> <p>24 A. I believe these are identical.</p> <p>25 Q. And then if you can look at Exhibit -- the --</p>	<p style="text-align: right;">Page 198</p> <p>1 the point number 19 about we can create applications</p> <p>2 that offer similar features and services to, or</p> <p>3 otherwise compete with, your application, that is in</p> <p>4 both Exhibit 66 and 67, right?</p> <p>5 MR. GODKIN: Objection.</p> <p>6 A. Yes, if that's the question.</p> <p>7 Q. So whichever version of the SRRs you signed on</p> <p>8 to that paragraph 19 provision was included?</p> <p>9 MR. GODKIN: Objection.</p> <p>10 A. Yes.</p> <p>11 Q. And the limitation of liability clause that we</p> <p>12 discussed earlier, that limitation of liability</p> <p>13 paragraph also exists in both 66 and 67, correct?</p> <p>14 A. I know it exists. I can't tell you, sitting</p> <p>15 here today, if the language is identical.</p> <p>16 Q. But you understood when you signed on to the</p> <p>17 SRRs, that there was a limitation of liability as part</p> <p>18 of the contract that Six4Three was entering with</p> <p>19 Facebook?</p> <p>20 MR. GODKIN: Objection.</p> <p>21 BY MS. MEHTA:</p> <p>22 Q. Right?</p> <p>23 MR. GODKIN: Objection.</p> <p>24 (Witness reviewing)</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 199</p> <p>1 Q. Was the ability to access Facebook's data</p> <p>2 important to Six4Three?</p> <p>3 A. The ability to access Facebook data was</p> <p>4 critical to Six4Three.</p> <p>5 Q. And you knew that going into the Six4Three</p> <p>6 endeavor, right?</p> <p>7 A. I'm not sure what you mean.</p> <p>8 Q. I mean, it didn't come as a surprise to you at</p> <p>9 some point that you needed to have Facebook data. You</p> <p>10 knew that all along, right?</p> <p>11 MR. GODKIN: Objection.</p> <p>12 A. Ted decided to build an application based upon</p> <p>13 Facebook's promise and representations around data.</p> <p>14 Once that decision was made, that application could not</p> <p>15 function without access to that data. So based upon</p> <p>16 that line of reasoning, yes, it was critical to</p> <p>17 Six4Three that it have access to that data.</p> <p>18 Q. What specific steps did you as the investor</p> <p>19 and adviser to Six4Three take to ensure that you would</p> <p>20 have ongoing access to Facebook data for the Six4Three</p> <p>21 enterprise?</p> <p>22 MR. GODKIN: Objection.</p> <p>23 A. Well, I was aware of Facebook platform and</p> <p>24 Graph API prior to and independent of Ted's decision to</p> <p>25 found Six4Three. And so I have had a number of</p>	<p style="text-align: right;">Page 200</p> <p>1 interactions with other companies, prior to the concept</p> <p>2 of Six4Three, regarding Facebook's representations</p> <p>3 around the Facebook platform.</p> <p>4 MS. MEHTA: Move to strike. Nonresponsive.</p> <p>5 BY MS. MEHTA:</p> <p>6 Q. That wasn't the question. The question was:</p> <p>7 What specific steps did you take as the investor and</p> <p>8 adviser of Six4Three to ensure that Six4Three would have</p> <p>9 ongoing perpetual access to Facebook data?</p> <p>10 A. Like I said, I was very familiar with Facebook</p> <p>11 Platform Graph API and its data. And for the entire</p> <p>12 time that I had become familiar with this massive new</p> <p>13 software application economy, the feedback had been that</p> <p>14 this data is available, it's reliable, it continues to</p> <p>15 be open, Facebook continues to support developers around</p> <p>16 accessing this data.</p> <p>17 And through all of my various</p> <p>18 conversations, even prior to Six4Three, that generated a</p> <p>19 significant comfort level among me and countless other</p> <p>20 investors and startups. Based on that, I then took a</p> <p>21 number of specific steps. First and foremost, we</p> <p>22 reviewed this agreement. Second, we, through our</p> <p>23 discussions with a wide range of other companies, became</p> <p>24 comfortable with the implications of building businesses</p> <p>25 on top of Facebook platform, largely by reviewing</p>

<p style="text-align: right;">Page 201</p> <p>1 Facebook's own representations regarding that platform.</p> <p>2 Q. Other than reviewing the agreement, which I</p> <p>3 think you're referring to the SRRs, and talking to a</p> <p>4 wide range of companies, can you identify any other</p> <p>5 specific steps that you took?</p> <p>6 MR. GODKIN: Objection.</p> <p>7 A. Give me the other thans again. Other than</p> <p>8 what?</p> <p>9 Q. Reviewing the agreement and talking to what</p> <p>10 you described as a wide range of other companies.</p> <p>11 A. Reviewing the representations of Facebook;</p> <p>12 information on Facebook's Web site; representations of</p> <p>13 Facebook's executive in public settings.</p> <p>14 Q. Anything else?</p> <p>15 A. I can't think of anything at the moment.</p> <p>16 Q. You never reached out to Facebook to ask them</p> <p>17 or confirm that you would have perpetual access to</p> <p>18 Facebook data, did you?</p> <p>19 MR. GODKIN: Objection.</p> <p>20 A. There was no e-mail address for Facebook to</p> <p>21 ask such a question.</p> <p>22 Q. So you didn't know how to get in touch with</p> <p>23 them? That's your -- that's your position?</p> <p>24 MR. GODKIN: Objection.</p> <p>25 A. Didn't know how to get in touch with them?</p>	<p style="text-align: right;">Page 202</p> <p>1 Q. Is that what you're saying?</p> <p>2 A. No.</p> <p>3 Q. Let me ask the question again --</p> <p>4 A. I m say ng --</p> <p>5 Q. -- did you ever reach out to Facebook to</p> <p>6 confirm that Six4Three would have perpetual access to</p> <p>7 Facebook's proprietary data?</p> <p>8 MR. GODKIN: Object on.</p> <p>9 A. Facebook aunched th s p atform n 2007. Over</p> <p>10 10 m on app cat ons have been bu t on th s</p> <p>11 p atform. The dea of hav ng to reach out spec f ca y</p> <p>12 to conf rm w th Facebook that such data wou d be</p> <p>13 access be for a market va ued at over \$220 b on does</p> <p>14 not seem ke t wou d be requ red at that po nt.</p> <p>15 Q. So the answer is that you never reached out to</p> <p>16 Facebook to confirm that you would have perpetual access</p> <p>17 to Facebook's proprietary data, right?</p> <p>18 MR. GODKIN: Object on.</p> <p>19 A. Dur ng what t me?</p> <p>20 Q. During any time prior to April of 2015.</p> <p>21 A. State the quest on aga n.</p> <p>22 Q. I'll ask the question differently. Prior to</p> <p>23 April of 2015, you never reached out to Facebook to</p> <p>24 confirm that Six4Three would have perpetual access to</p> <p>25 Facebook's proprietary data --</p>
<p style="text-align: right;">Page 203</p> <p>1 MR. GODKIN: Object on.</p> <p>2 BY MS. MEHTA:</p> <p>3 Q. -- is that right?</p> <p>4 A. That s ncorrect.</p> <p>5 Q. You reached out to Facebook before April of</p> <p>6 2015 to confirm that you would have access to the data?</p> <p>7 MR. GODKIN: Object on.</p> <p>8 A. Frst, I d spute your use of the term</p> <p>9 "perpetua ." If you can phrase your quest on w thout</p> <p>10 that term, I can answer t.</p> <p>11 Q. Okay. Let me ask the question this way:</p> <p>12 You -- did you ever reach out to Facebook before April</p> <p>13 of 2015 to confirm that Six4Three would have ongoing</p> <p>14 access to Facebook's proprietary data?</p> <p>15 A. I d spute your use of the term "ongo ng," but</p> <p>16 the answer s yes, I d d.</p> <p>17 Q. Okay. When did you do that?</p> <p>18 A. I contacted a Facebook p atform emp oyee named</p> <p>19 M chae Huang somet me n 2014, ate 2014, I be eve.</p> <p>20 Q. Okay. So -- and we'll talk about that</p> <p>21 interaction in a minute. Let me ask the question</p> <p>22 differently.</p> <p>23 Prior to October of 2014, did you ever</p> <p>24 contact anyone at Facebook to confirm that Six4Three</p> <p>25 would have ongoing access to Facebook's proprietary data</p>	<p style="text-align: right;">Page 204</p> <p>1 for a period of 2, 5 or 10 years?</p> <p>2 MR. GODKIN: Objection.</p> <p>3 A. I don't know.</p> <p>4 Q. You can't identify any instance in which you</p> <p>5 asked that question of Facebook, right?</p> <p>6 MR. GODKIN: Objection.</p> <p>7 A. Is October of 2015 when I contacted</p> <p>8 Michael Huang?</p> <p>9 Q. Yes.</p> <p>10 A. Okay. Can you show me something that</p> <p>11 demonstrates that?</p> <p>12 Q. We'll get to that. What I want to know is --</p> <p>13 A. Well, you're asking me to answer a question</p> <p>14 that I don't know the answer to.</p> <p>15 Q. I'm going to represent to you that your e-mail</p> <p>16 to Michael Huang was dated October 16th, 2014. So my</p> <p>17 question is: Prior to October of 2014, can you identify</p> <p>18 any instance in which you or anyone associated with</p> <p>19 Six4Three reached out to Facebook to confirm that you</p> <p>20 would have ongoing access to Facebook's proprietary</p> <p>21 data?</p> <p>22 MR. GODKIN: Objection.</p> <p>23 A. What do you mean by "ongoing access"?</p> <p>24 Q. That you wouldn't -- that they wouldn't turn</p> <p>25 off your access to Facebook's proprietary data at some</p>

<p style="text-align: right;">Page 205</p> <p>1 point in time in the future.</p> <p>2 MR. GODKIN: Objection.</p> <p>3 A. Still don't know how to address the use of the</p> <p>4 term "ongoing access." You're making it sound like even</p> <p>5 if I were to contact a Facebook employee, I wouldn't</p> <p>6 have ever contacted them stating terms like perpetual</p> <p>7 access or ongoing access. It's an issue that you're</p> <p>8 attempting to create here that was never considered.</p> <p>9 Q. No, I'm not. You said that having access to</p> <p>10 Facebook data was critical to Six4Three, right?</p> <p>11 A. Correct, and then you added the term</p> <p>12 perpetual.</p> <p>13 Q. Okay. Let's -- let's break it down by time,</p> <p>14 then. Let's take a window of five years, okay?</p> <p>15 Prior to October of 2014, did you or</p> <p>16 anyone on behalf of Six4Three ever reach out to Facebook</p> <p>17 to confirm that Six4Three would have access to</p> <p>18 Facebook's proprietary data for five years?</p> <p>19 MR. GODKIN: Objection.</p> <p>20 A. For five years, no.</p> <p>21 Q. For 10 years?</p> <p>22 A. No.</p> <p>23 MR. GODKIN: Objection.</p> <p>24 BY MS. MEHTA:</p> <p>25 Q. For 15 years?</p>	<p style="text-align: right;">Page 206</p> <p>1 A. No.</p> <p>2 MR. GODKIN: Objection.</p> <p>3 BY MS. MEHTA:</p> <p>4 Q. For 20 years?</p> <p>5 MR. GODKIN: Give me a chance to object.</p> <p>6 Objection.</p> <p>7 BY MS. MEHTA:</p> <p>8 Q. For 20 years?</p> <p>9 A. No.</p> <p>10 Q. Prior to October of 2014, did you or anyone</p> <p>11 else on behalf of Six4Three reach out to Facebook to</p> <p>12 confirm that you would have access to Facebook's</p> <p>13 proprietary data for any period of time?</p> <p>14 MR. GODKIN: Objection.</p> <p>15 A. You're asking if I e-mailed a Facebook</p> <p>16 employee, correct?</p> <p>17 Q. Or otherwise asked Facebook.</p> <p>18 A. No.</p> <p>19 Q. I'm going to hand you Exhibit No. 68.</p> <p>20 (Exhibit 68 marked for identification)</p> <p>21 BY MS. MEHTA:</p> <p>22 Q. For the record, this is a Six4Three 892</p> <p>23 through 897.</p> <p>24 Do you recognize this document?</p> <p>25 A. Give me one second.</p>
<p style="text-align: right;">Page 207</p> <p>1 (Witness reviewing)</p> <p>2 A. Yes, I recognize this and am familiar with it</p> <p>3 now.</p> <p>4 Q. Okay. And earlier in your testimony, you</p> <p>5 referenced a point at which Facebook actually limited</p> <p>6 the number of API calls that you could make to its</p> <p>7 servers. Do you recall that?</p> <p>8 A. Yes. Facebook limited our access to data on</p> <p>9 July -- July 17th, it appears.</p> <p>10 Q. Okay. And if you look at this document, what</p> <p>11 it says is -- I'm looking at page 894. There's an</p> <p>12 e-mail dated July 17, 2014, at 12:35 p.m.</p> <p>13 Do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. And that's from Mr. Gildea, right?</p> <p>16 A. Yes.</p> <p>17 Q. And it says, "We got API rate limited." Do</p> <p>18 you see that?</p> <p>19 A. Yes.</p> <p>20 Q. And then it quotes from a Facebook document</p> <p>21 that talks about app level rate limiting. Do you see</p> <p>22 that?</p> <p>23 A. Yes.</p> <p>24 Q. And you're familiar with -- as of July of</p> <p>25 2014, you were familiar with the fact that Facebook had</p>	<p style="text-align: right;">Page 208</p> <p>1 policies in place to limit the API rate for app</p> <p>2 developers, right?</p> <p>3 A. Yes, we were familiar with that as a result of</p> <p>4 our review of Section 2, provision 9, we can limit your</p> <p>5 access to data.</p> <p>6 Q. I understand. I understand that's your</p> <p>7 position, but you also --</p> <p>8 A. I'm just answering the question.</p> <p>9 Q. Well, I don't think you are. Let me -- let me</p> <p>10 be clear. My question is: Did you understand that</p> <p>11 Facebook could limit the API rate, have a rate limit on</p> <p>12 API calls?</p> <p>13 A. Yes, I understood that from the time that I</p> <p>14 reviewed this agreement. (Indicating)</p> <p>15 Q. Okay. And you understood -- and you're</p> <p>16 pointing to the SRRs, right?</p> <p>17 A. Yes.</p> <p>18 Q. Now, you understand that Facebook actually has</p> <p>19 a separate policy with respect to app level rate</p> <p>20 limiting, right?</p> <p>21 A. Correct. Facebook flushes out that policy on</p> <p>22 its app level rate --</p> <p>23 Q. So --</p> <p>24 A. -- limiting page.</p> <p>25 Q. -- so your position is that when Facebook has</p>

<p style="text-align: right;">Page 249</p> <p>1 Six4Three would be able to use version 1.0 forever?</p> <p>2 A. Zuckerberg stated explicitly that Six -- that</p> <p>3 Six -- that companies like Six4Three would be able to</p> <p>4 continue to use version 1.0 and that they would be able</p> <p>5 to choose which version of the API they want to use. He</p> <p>6 never said forever. There's really no such thing as</p> <p>7 forever. But he certainly stated that that would be</p> <p>8 provided on an equal and fair basis.</p> <p>9 Q. But did you -- did you believe at that point</p> <p>10 he was saying that you would be able to use version 1.0</p> <p>11 for five years or 10 years?</p> <p>12 A. We believed that as long as version 1.0 was</p> <p>13 accessible, as long as Graph API was accessible, the</p> <p>14 friends endpoints were accessible, that they would be</p> <p>15 made accessible on an equal, neutral and fair basis to</p> <p>16 all companies that participated in the market.</p> <p>17 Q. And at the time, did you do anything to</p> <p>18 evaluate how long version 1.0 would be accessible?</p> <p>19 A. State the question again. Did we do</p> <p>20 anything --</p> <p>21 Q. Did you do anything to investigate or</p> <p>22 determine how long version 1.0 would be accessible</p> <p>23 following the April 30th, 2014 announcement?</p> <p>24 A. Well, Zuckerberg explicitly stated that it</p> <p>25 would be remain accessible. He never put a time frame</p>	<p style="text-align: right;">Page 250</p> <p>1 on it.</p> <p>2 Q. But did you do anything to figure out how</p> <p>3 long -- I mean you --</p> <p>4 A. Again, you're asking me to solve a problem we</p> <p>5 don't know exists.</p> <p>6 Q. Let me ask the question this way: Did you</p> <p>7 believe at the time that he said that Graph API</p> <p>8 version 1.0 would remain accessible, that it would</p> <p>9 remain accessible for 50 years?</p> <p>10 A. I don't think Zuckerberg's in a position to</p> <p>11 guarantee that Facebook would exist for 50 years.</p> <p>12 Q. What about 10 years? Did you think he was</p> <p>13 guaranteeing version 1.0 for 10 years?</p> <p>14 A. This emphasis on in perpetuity is -- is not</p> <p>15 germane or relevant. As long as it is accessible, it</p> <p>16 will be accessible to everyone on equal terms. At any</p> <p>17 point in time, it could be made inaccessible. Facebook</p> <p>18 could go out of business, for instance, but that means</p> <p>19 it would be inaccessible for everyone, including for</p> <p>20 Facebook to develop its own competitive applications.</p> <p>21 Q. So your view was that Graph API 1.0 -- I'm</p> <p>22 sorry. Strike that.</p> <p>23 Your interpretation at the time of Mark</p> <p>24 Zuckerberg's F8 speech was that Facebook would make</p> <p>25 Graph version 1.0 available to developers for as long as</p>
<p style="text-align: right;">Page 251</p> <p>1 Facebook itself had access to friends photos?</p> <p>2 MR. GODKIN: Objection.</p> <p>3 BY MS. MEHTA:</p> <p>4 Q. That was your interpretation?</p> <p>5 MR. GODKIN: Objection.</p> <p>6 A. That is what Zuckerberg and a host of other</p> <p>7 Facebook executives and employees had represented since</p> <p>8 2007.</p> <p>9 Q. And when you say "represented," you mean in F8</p> <p>10 speeches?</p> <p>11 A. Well, our review -- I didn't watch specific</p> <p>12 speeches, but I read transcripts. I went to the</p> <p>13 Web site. We reviewed representations. I read</p> <p>14 articles. I was involved in the software development</p> <p>15 community. I was aware of many representations from</p> <p>16 2007 all the way through to 2014 and '15.</p> <p>17 And most of these representations formed</p> <p>18 a part of my general working knowledge in the software</p> <p>19 business that had nothing to do with Six4Three. And so</p> <p>20 at the time that Six4Three decided to even participate</p> <p>21 in this market, I was already generally familiar with</p> <p>22 not only, you know, these representations that had been</p> <p>23 made for a very long period of time, but with many</p> <p>24 companies who had participated in this ecosystem with</p> <p>25 great success, including many of my friends and many of</p>	<p style="text-align: right;">Page 252</p> <p>1 the people that I've known for quite some time.</p> <p>2 Q. Can you identify any specific representation</p> <p>3 made by Facebook between 2007 and 2014 that you were</p> <p>4 aware of and claim to be relying on as of April of</p> <p>5 2015 -- sorry. April of 2014?</p> <p>6 A. Well, so I wasn't -- Six4Three was relying on</p> <p>7 these representations. I wasn't relying on these</p> <p>8 representations. In terms of my decision to make an</p> <p>9 investment in Six4Three and my belief that that</p> <p>10 investment was a wise decision and would generate a</p> <p>11 return and was being made on the premise of Facebook</p> <p>12 being a stable platform, yes, I could certainly identify</p> <p>13 those.</p> <p>14 Q. What specific representations are you saying</p> <p>15 you relied on?</p> <p>16 A. I mean, the most obvious one that comes to</p> <p>17 mind is the Facebook platform announcement; the Facebook</p> <p>18 platform FAQ --</p> <p>19 MR. GODKIN: Slow down.</p> <p>20 A. -- the various developer blog posts associated</p> <p>21 with the 2007 announcement; the 2010 announcement; the</p> <p>22 various news articles regarding Zuckerberg and Taylor's</p> <p>23 speeches at the 2010 announcement by range of</p> <p>24 representations over an extended period of time.</p> <p>25 Q. Do you have any documentary evidence that</p>

<p style="text-align: right;">Page 269</p> <p>1 there's a reference here to -- on line 16 --</p> <p>2 MR. GODKIN: Which page?</p> <p>3 MS. MEHTA: Page 7.</p> <p>4 BY MS. MEHTA:</p> <p>5 Q. Line 16 says, "\$4,081,950 in enterprise value</p> <p>6 at the time Facebook decided to end access to Graph</p> <p>7 API."</p> <p>8 Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. So what date is that referring to?</p> <p>11 A. So the valuation of Six4Three was established</p> <p>12 based on my discussions with Ted. And so the 4,000 --</p> <p>13 the 4,081,950 is simply the number of outstanding units</p> <p>14 multiplied by the price per unit. #2 received a portion</p> <p>15 of its units based on that capital investment, and then</p> <p>16 it received a portion of those units based upon the fact</p> <p>17 that it was, basically, responsible for the ability of</p> <p>18 Six4Three to exist.</p> <p>19 So it's roughly representing a</p> <p>20 \$3.75 million premoney valuation, which for a seed</p> <p>21 company is very low. If you look at the average seed</p> <p>22 valuation today, it's roughly \$6 million. So this</p> <p>23 represents a -- what? You know, 33 percent discount</p> <p>24 relative to the average seed valuation for financing of</p> <p>25 today.</p>	<p style="text-align: right;">Page 270</p> <p>1 Q. And when you say average seed valuation</p> <p>2 finances done today, what specific technology sectors or</p> <p>3 industries are you referring to?</p> <p>4 A. It refers to venture backed software startups.</p> <p>5 Q. Can you be any more specific than that?</p> <p>6 A. I believe the data I'm referring to comes from</p> <p>7 one of those organizations like PitchBook. I don't</p> <p>8 recall specifically. But I just attended a CEO summit</p> <p>9 with one of my VCs, and we spent lots of time talking</p> <p>10 about this data.</p> <p>11 And one of the numbers that was noted is</p> <p>12 that \$6 million, according to -- whether it's PitchBook</p> <p>13 or one of these other platforms for these seed data --</p> <p>14 MR. GODKIN: Slow down.</p> <p>15 A. -- \$6 million was the -- the average premoney</p> <p>16 valuation for a seed round.</p> <p>17 Q. What do you think the -- strike that.</p> <p>18 Do you know what the average premoney</p> <p>19 valuation for a seed round for an app in 2012 or 2013</p> <p>20 was?</p> <p>21 A. No, but that's something that somebody could</p> <p>22 find out.</p> <p>23 Q. And do you know what the average premoney</p> <p>24 valuation for a seed round for image recognition app was</p> <p>25 in 2012 or 2013?</p>
<p style="text-align: right;">Page 271</p> <p>1 A. If I don't know the answer to the first, I</p> <p>2 can't know the answer to the second.</p> <p>3 Q. Do you know what the average premoney</p> <p>4 valuation for a seed round of an image recognition app</p> <p>5 is at any point in time since 2012 to the present?</p> <p>6 A. Off the top of my head, sitting here right</p> <p>7 now, I cannot give you a specific number, although, as</p> <p>8 someone who's been investing in this business, I have</p> <p>9 done research on this and there are comps out there.</p> <p>10 Q. For image recognition software startups?</p> <p>11 A. There's data around recognition software and</p> <p>12 other startups. I don't know if there has been a</p> <p>13 venture, you know, backed report specifically around</p> <p>14 image recognition.</p> <p>15 Q. Can you identify any evidence of what a</p> <p>16 premoney seed valuation for an image recognition startup</p> <p>17 would have been at any point in time from 2012 to 2015?</p> <p>18 A. Yes. They're roughly equivalent to most other</p> <p>19 software businesses; SAS businesses, consumer</p> <p>20 businesses. Roughly speaking, if you're developing a</p> <p>21 subscription product, right, a turnkey subscription</p> <p>22 software service, and you're seeking money from the</p> <p>23 venture capital community, and you're seeking your first</p> <p>24 nonfriends and family financing, your first seed</p> <p>25 financing, then, roughly speaking, your valuation is</p>	<p style="text-align: right;">Page 272</p> <p>1 going to be somewhere in the 3 to \$10 million premoney</p> <p>2 range.</p> <p>3 Q. And can you think of an example of a</p> <p>4 subscription-based service that has a valuation of 3 to</p> <p>5 \$10 million?</p> <p>6 MR. GODKIN: Objection.</p> <p>7 BY MS. MEHTA:</p> <p>8 Q. Anything that comes to mind?</p> <p>9 A. Sorry. You're asking me to identify a company</p> <p>10 that has raised money at a 3 to \$10 million valuation?</p> <p>11 Q. On a subscription-based model.</p> <p>12 A. I mean, just look at any VC Web sites.</p> <p>13 Q. How --</p> <p>14 A. Most -- most all of those companies, if they</p> <p>15 haven't raised a Series A, the money they raised was in</p> <p>16 a valuation within that range.</p> <p>17 Q. Are you -- are you aware of food delivery</p> <p>18 subscription services like BlueApron?</p> <p>19 A. I know of BlueApron. Sure.</p> <p>20 Q. Okay. And would you consider the premoney</p> <p>21 seed valuation for a food delivery, dinner delivery</p> <p>22 service, like BlueApron, to be the same as an image</p> <p>23 recognition subscription-based model?</p> <p>24 A. Valuations in the on-demand delivery space,</p> <p>25 from my standpoint, should be much lower than the image</p>

EXHIBIT 10



f8 Event and Facebook Platform FAQ

What is f8?

f8 was an event held at the San Francisco Design Center on May 24, 2007, during which Mark Zuckerberg unveiled the next evolution of Facebook Platform. The event included an eight-hour "hackathon," where both Facebook engineers and outside developers collaborated on building new applications on the new Facebook Platform.

What is a "hackathon"?

A hackathon is an all-night coding event during which Facebook engineers work on any project that interests them. Facebook uses the word "hackathon" to refer to a gathering of engineers, who possess technical expertise and collaborate on innovative projects. Facebook has a tradition of holding frequent developer hackathons, which have spawned some of the most popular features and applications on the site.

What is Facebook Platform?

Facebook Platform is a development system that enables companies and developers to build applications for the Facebook website, where all of Facebook's 24 million active users can interact with them. Facebook Platform offers deep integration into the Facebook website, distribution through the social graph and an opportunity to build a business.

What is the social graph?

The social graph is at the core of Facebook. It is the network of connections and relationships between people on Facebook and enables the efficient spreading and filtering of information. Just as people share information with their friends and the people around them in the real world, these connections are reflected online in the Facebook social graph.

What is a Facebook application?

A Facebook application uses Facebook Platform to access information from the social graph, offering users an experience that's relevant to them. Facebook applications can plug into the Facebook website in a number of ways: applications can be embedded on users' profile pages, reside on their own separate pages (called "canvas" pages), or live through desktop applications using data from the Facebook social graph.

What's new in Facebook Platform?

We've been adding functionality since Facebook Platform first shipped in beta in August 2006. With the latest evolution of Facebook Platform however, third-party developers can now create applications on the Facebook site with the same level of integration as applications built by internal Facebook developers. Now developers everywhere have the ability to create Facebook applications that deeply integrate into the Facebook site, as well as the potential for mass distribution through the social graph and new business opportunities.

Why did Facebook launch Facebook Platform?

Our engineers have created great applications for Facebook, but we recognized that third-party developers can help us make Facebook an even more powerful social utility. Facebook Platform gives developers everywhere the tools to create applications that we just wouldn't have the resources to build in-house, and those applications make Facebook an even better way for our users to exchange information. Developers also benefit from Facebook Platform as it gives them the potential to broadly distribute their applications and even build new business opportunities.

What kinds of applications can be built on Facebook Platform?

The kinds of applications developers can build on Facebook Platform are limited only by their imaginations. Because applications are based on the Facebook social graph they can be more relevant to users, keeping people in touch with what and whom they care about. We've already seen a variety of applications built by our developer partners, including those for sharing media files, book reviews, slideshows and more. Some of the



possibilities of Facebook applications are illustrated in the Facebook Platform Application Directory, available at <http://www.facebook.com/apps>.

Are there any restrictions on what developers can build?

Developers are encouraged to exercise their creativity when building applications. Of course, all applications are subject to the Terms of Service that every developer agrees to, which include basic requirements such as not storing any sensitive user information, not creating any offensive or illegal applications, and not building anything that phishes or spams users. And users will always have the power to report any applications that compromise Facebook's trusted environment, keeping our users' information safe.

What are the benefits of Facebook Platform for users?

With Facebook Platform, users gain the ability to define their experience on Facebook by choosing applications that are useful and relevant to them. Now that they have access to a virtually limitless set of applications from outside developers, users have an unprecedented amount of choice. They can share information and communicate with their trusted connections in ways that would never have been possible before Facebook opened its platform.

How do users add applications to and remove applications from their account?

If a user sees an application she likes on a friend's profile, she can add it to her account by clicking the "Add" link on the application's profile box. She can also add new applications by navigating to the application's specific page in the Facebook Platform Application Directory and clicking "Add Application" in the top-right corner. To remove an application, she first clicks "Applications" on the left navigation bar. From there, she can "Remove" any of the applications in her account, whether they are built by a developer partner or by Facebook.

What are the privacy controls for Facebook Platform, and what kind of user information can be shared?

On Facebook, users are always in control of their information and can choose how much of their information is made available to specific applications. With Facebook Platform, we're offering additional privacy controls and requiring that third parties treat user information with the same respect we do—and our users have come to expect. Users can also choose to completely opt out of making their data available through Facebook Platform. Applications can never violate users' basic privacy settings and are meant to provide users with a better opportunity to share their information with their friends and networks.

What do third-party applications do with user information?

Applications built by third parties are required to respect Facebook users' privacy preferences. Third-party applications allow users and their friends to share information in new ways, without affecting the security and privacy that they've always enjoyed on Facebook.

How many applications are there for Facebook Platform?

At f8, we are launching with over 85 applications from more than 65 developer partners, and that's only the beginning. We're encouraging interested developers everywhere to create Facebook applications. We have no limits on the number of applications that can be created.

What differentiates Facebook applications from widgets on other sites?

Facebook applications are deeply integrated into the site and take advantage of the network of real connections through which users share information and communicate—what we call the "social graph." Widgets are typically single-purpose Flash add-ons to a web page (i.e., displaying a single video) that are not fully integrated into a site nor are aware of the social context among users.

How will Facebook maintain its minimalist style if users can add and move applications around on their profile?

We're giving our users the choice to add applications and control their placement in their profiles, but we're not changing the essential layout and familiar style of the Facebook site. Facebook applications are focused on providing new ways to spread information on Facebook, not about redesigning the way a profile looks. For example, users will not be able to change the site background, add music that plays when their profiles load, or



insert animation into their profiles. Individual applications may play media, music or animations but only when a visitor to that profile interacts with them.

How will Facebook deal with applications that compete with one another or even compete with Facebook-built applications?

We welcome developers with competing applications, including developers whose applications might compete with Facebook-built applications. Many applications are likely to offer similar features. We've designed Facebook Platform so that applications from third-party developers are on a level playing field with applications built by Facebook. Ultimately, our users will decide which applications they find most useful, and it is these applications that will become the most popular.

How will Facebook monetize Facebook Platform?

All the great applications built by our developer partners provide a service to our users and strengthen the social graph. The result is even more engaged Facebook users creating more advertising opportunities.

Can Facebook applications include ads?

We want to enable developers to build a business on their Facebook applications, so we're giving developers the freedom to monetize their applications as they like. Developers can include advertising on their applications' canvas pages, though no advertising will be allowed within the application boxes that appear within user profiles.

Are you going to share revenue with developers?

While revenue sharing is not available at launch, we are looking into ways to share advertising revenue with developers. This version of Facebook Platform already lets developers monetize their applications as they like, whether they choose to offer it for free or build a business on their application.

What are the key technical elements of Facebook Platform?

Facebook Platform offers several technologies that help developers use data from the social graph. In addition to the Facebook API, this recently launched version of Facebook Platform introduces Facebook Markup Language (FBML), which enables developers to build applications that deeply integrate into the Facebook site. Facebook Platform also includes Facebook Query Language (FQL), which lets developers use a SQL-style interface to query the data they can access through the API.

For more details on the technology behind Facebook Platform, check out the Facebook Developer site at <http://developers.facebook.com>.

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[Attorney name (Bar No.)
Address Line 1
Address Line 2
Tel:
Fax:]

Attorney for Amicus Curiae [Name of Organization]

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN MATEO

SIX4THREE, LLC, a Delaware limited
Liability company,
Plaintiff,

v.

FACEBOOK, INC., a Delaware corporation;
MARK ZUCKERBERG, an individual;
CHRISTOPHER COX, an individual;
JAVIER OLIVAN, an individual;
SAMUEL LESSIN, an individual;
MICHAEL VERNAL, an individual;
ILYA SUKHAR, an individual; and
DOES 1 through 50, inclusive,
Defendants.

Case No. CIV533328

Assigned For All Purposes to
Hon. V. Raymond Swope, Dept. 23

**APPLICATION FOR LEAVE TO
FILE AMICUS CURIAE BRIEF IN
OPPOSITION TO DEFENDANTS'
MOTION TO SEAL PLAINTIFF'S
ANTI-SLAPP OPPOSITION**

HEARING DATE: July 2, 2018
HEARING TIME: 9:00 a.m.
DEPARTMENT 23
JUDGE: Hon. V. Raymond Swope
FILING DATE: April 10, 2015
TRIAL DATE: April 25, 2019

1 [Name of Organization] respectfully requests leave of this Court to file an amicus curiae
2 brief in support of Plaintiff's Opposition to Defendants' Motion to Seal Plaintiff's Anti-SLAPP
3 Opposition. [Name of Organization] has a strong interest in promoting an informed public debate
4 regarding Defendants' management of the Facebook Platform. [Name of Organization] has
5 reported extensively on these issues, which have long been in the public domain. As such, [Name
6 of Organization's] experience with these issues may aid this Court in its consideration of the
7 factual and legal issues raised in this matter. Accordingly, [Name of Organization] requests leave
8 to file the amicus curiae brief attached as Exhibit A hereto. *See Jersey Maid Milk Products Co. v.*
9 *Brock* (1939) 13 Cal.2d 661, 665 [91 P.2d 599]; *In re Veterans' Industries, Inc.* (1970) 8
10 Cal.App.3d 902, 924-925 [88 Cal.Rptr. 303]; *People ex rel. State Lands Com. v. Long Beach*
11 (1960) 183 Cal.App.2d 271, 276; *see also* Cal. Rules of Court, Rule 8.200; 4 Witkin Cal. Proc.,
12 Pleading § 215 (4th ed. 1997) at 278-280; CEB, *California Civil Appellate Practice*, § 14.66-
13 14.67.

14 1. [Name of Organization] is familiar with the history of Facebook and Facebook
15 Platform, the issues involved in the case, and the pleadings and papers filed therein to date.

16 2. [Name of Organization] is [description of organization and its purpose].

17 3. Over 2 billion people have relied upon or continue to rely upon Defendants to
18 manage Facebook Platform in a manner that respects the privacy of their digital information and
19 ensures their ownership and control over data they upload to the Platform. [Name of
20 Organization], as a media company, has a responsibility to promote an informed public debate
21 regarding Defendants' management of the sensitive information and digital identities of almost
22 one-third of the world's population.

23 4. Tens of millions of businesses rely upon Facebook Platform, which is one of the
24 largest economies globally with an economic impact dwarfing the GDP of most sovereign
25 nations, according to Facebook's own estimates.¹ [Name of Organization], as a media company,
26

27 ¹ *See, e.g.,* [https://newsroom.fb.com/news/2015/01/new-deloitte-report-looks-at-facebooks-
28 impact-on-global-economy-jobs/](https://newsroom.fb.com/news/2015/01/new-deloitte-report-looks-at-facebooks-impact-on-global-economy-jobs/).

1 has a responsibility to promote an informed public debate regarding the impact of Facebook
2 Platform on the economy, including any impacts on competition and consumer choice.

3 5. [Name of Organization] has [hundreds of thousands or millions] readers or
4 subscribers, many of whom are personally affected by the issues raised in this matter. All of these
5 readers or subscribers have a strong interest in full disclosure regarding Defendants' management
6 of their data, including their management of third party access to such data.

7 6. As a result of media organizations like [Name of Organization] reporting on
8 Facebook Platform in 2018, a number of governments have opened investigations into
9 Facebook's management of its Platform, including its management of user data and third party
10 data access. According to public announcements, government entities currently investigating
11 Facebook's management of Platform and third party data access include the Attorneys General of
12 California, Massachusetts, Mississippi, Missouri, New Jersey, New York, Oregon, and
13 Washington; the United States Federal Trade Commission; and various European governments
14 and regulatory authorities.² If true, Plaintiff's allegations would directly refute a wide range of
15 statements Defendants have made in 2018 in response to inquiries by government authorities and
16 media organizations. As a respected national media organization, [Name of Organization] has a
17 strong interest and responsibility in reporting on these matters fully and truthfully to increase the
18 likelihood that the ongoing investigations proceed with the benefit of accurate and complete
19 information.

20 7. These strong interests of [Name of Organization] and its readership are threatened
21 by Defendants' Motion to Seal and their ongoing attempts to shield their internal

22 ² See [https://ago.mo.gov/home/breaking-news/ag-hawley-issues-investigative-demands-to-](https://ago.mo.gov/home/breaking-news/ag-hawley-issues-investigative-demands-to-facebook)
23 [facebook](https://ago.mo.gov/home/breaking-news/ag-hawley-issues-investigative-demands-to-facebook); [https://ag.ny.gov/press-release/statement-ag-schneiderman-facebookcambridge-](https://ag.ny.gov/press-release/statement-ag-schneiderman-facebookcambridge-analytica)
24 [analytica](https://ag.ny.gov/press-release/statement-ag-schneiderman-facebookcambridge-analytica); [http://www.ago.state.ms.us/releases/ag-hood-investigating-facebooks-user-privacy-](http://www.ago.state.ms.us/releases/ag-hood-investigating-facebooks-user-privacy-practices/)
25 [practices/](http://www.ago.state.ms.us/releases/ag-hood-investigating-facebooks-user-privacy-practices/); <http://nj.gov/oag/newsreleases18/pr20180507b.html>; [https://oag.ca.gov/news/press-](https://oag.ca.gov/news/press-releases/attorney-general-becerra-calls-facebook-protect-users-data)
26 [releases/attorney-general-becerra-calls-facebook-protect-users-data](https://oag.ca.gov/news/press-releases/attorney-general-becerra-calls-facebook-protect-users-data); [https://www.doj.state.or.us/](https://www.doj.state.or.us/media-home/news-media-releases/ag-rosenblum-joins-coalition-demanding-answers-from-facebook/)
27 [media-home/news-media-releases/ag-rosenblum-joins-coalition-demanding-answers-from-](https://www.doj.state.or.us/media-home/news-media-releases/ag-rosenblum-joins-coalition-demanding-answers-from-facebook/)
28 [facebook/](https://www.doj.state.or.us/media-home/news-media-releases/ag-rosenblum-joins-coalition-demanding-answers-from-facebook/); [http://nwnewsnetwork.org/post/washington-oregon-attorneys-general-demand-](http://nwnewsnetwork.org/post/washington-oregon-attorneys-general-demand-answers-facebook)
[answers-facebook](http://nwnewsnetwork.org/post/washington-oregon-attorneys-general-demand-answers-facebook); [https://www.ftc.gov/news-events/press-releases/2018/03/statement-acting-](https://www.ftc.gov/news-events/press-releases/2018/03/statement-acting-director-ftcs-bureau-consumer-protection)
[director-ftcs-bureau-consumer-protection](https://www.ftc.gov/news-events/press-releases/2018/03/statement-acting-director-ftcs-bureau-consumer-protection); [https://ico.org.uk/about-the-ico/news-and-events/news-](https://ico.org.uk/about-the-ico/news-and-events/news-and-blogs/2018/05/ico-statement-investigation-into-data-analytics-for-political-purposes/)
[and-blogs/2018/05/ico-statement-investigation-into-data-analytics-for-political-purposes/](https://ico.org.uk/about-the-ico/news-and-events/news-and-blogs/2018/05/ico-statement-investigation-into-data-analytics-for-political-purposes/).

1 communications, decisions and processes from public view. These strong interests outweigh any
2 legitimate interest Defendants may have in sealing Plaintiff's Anti-SLAPP Opposition and the
3 supporting declaration and exhibits.

4 8. [Name of Organization's] purpose in filing an amicus brief is to alert this Court to
5 a significant public interest in understanding how Defendants have managed their data in light of
6 the ongoing public debate regarding Facebook Platform, the significant power Defendants wield
7 over individuals and businesses, and whether Defendants have lived up to the responsibility that
8 comes with that power. As such, [Name of Organization] does not seek to introduce new legal
9 theories or evidence. Further, while [Name of Organization] supports Plaintiff's Opposition to
10 Defendants' Motion to Seal, [Name of Organization] takes no position on any claims or defenses
11 asserted by either Party in this matter. Rather, [Name of Organization] submits this brief in order
12 to elaborate on some key issues raised by the parties regarding the importance of the public
13 interest in accessing true and accurate information regarding Defendants' management of
14 Facebook Platform.

15 9. To this end, [Name of Organization's] brief focuses on two key legal issues: (1)
16 whether the evidence sought to be unsealed is relevant to the public interest; and (2) whether
17 Defendants' Motion to Seal meets the stringent requirements of Rule 2.550(d).

18 WHEREFORE, [Name of Organization] respectfully requests that this Court grant leave
19 to file the amicus curiae brief attached as Exhibit A hereto.

20
21 DATED:

[ATTORNEY FIRM OR ORGANIZATION
NAME]

22
23 By:

24 [Attorney Name]
25 Attorney for Amicus Curiae
26 [Organization Name]
27
28

EXHIBIT A

[Attorney name (Bar No.)
Address Line 1
Address Line 2
Tel:
Fax:]

Attorney for Amicus Curiae [Name of Organization]

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN MATEO

SIX4THREE, LLC, a Delaware limited
Liability company,
Plaintiff,

v.

FACEBOOK, INC., a Delaware corporation;
MARK ZUCKERBERG, an individual;
CHRISTOPHER COX, an individual;
JAVIER OLIVAN, an individual;
SAMUEL LESSIN, an individual;
MICHAEL VERNAL, an individual;
ILYA SUKHAR, an individual; and
DOES 1 through 50, inclusive,
Defendants.

Case No. CIV533328

Assigned For All Purposes to
Hon. V. Raymond Swope, Dept. 23

**BRIEF OF AMICUS CURIAE IN
OPPOSITION TO DEFENDANTS'
MOTION TO SEAL PLAINTIFF'S
OPPOSITION TO DEFENDANTS'
ANTI-SLAPP MOTIONS**

HEARING DATE: July 2, 2018
HEARING TIME: 9:00 a.m.
DEPARTMENT 23
JUDGE: Hon. V. Raymond Swope
FILING DATE: April 10, 2015
TRIAL DATE: April 25, 2019

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TABLE OF CONTENTS

INTRODUCTION

STATEMENT OF FACTS

ARGUMENT.....

 I. Legal Standard.....

 II. Defendants’ Motion to Seal Should Be Denied As the Public Has a
 Strong Interest In Determining the Veracity of Plaintiff’s Allegations.....

 III. Defendants Cannot Meet the Stringest Requirements of Rule 2.550(d).....

CONCLUSION.....

1 **TABLE OF AUTHORITIES**

2

3 **Page**

4 **CASES**

5 *H.B. Fuller Co. v. Doe*,
(2007) 151 Cal.App.4th 879 [60 Cal.Rptr.3d 501].....

6 *Huffy Corp. v. Superior Court*,
(2003) 112 Cal.App.4th 97 [4 Cal.Rptr.3d 823].....

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8 *McNair v. National Collegiate Athletic Assn.*,
(2015) 234 Cal.App.4th 25 [183 Cal.Rptr.3d 490].....

9
10 *NBC Subsidiary (KNBC-TV), Inc. v. Superior Court*,
(1999) 20 Cal.4th 1178 [86 Cal.Rptr.2d 778, 980 P.2d 337].....

11 *Overstock.com, Inc. v. Goldman Sachs Group, Inc.*,
12 (2014) 231 Cal.App.4th 471 [180 Cal.Rptr.3d 234]..... *passim*

13 *Williams v. U.S. Bank N.A.*,
14 (E.D.Cal. 2013) 290 F.R.D. 600.....

15 **STATUTES AND OTHER AUTHORITIES**

16 C.R.C. 2.550 *et seq.*..... *passim*

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INTRODUCTION

[Name of Organization] (“Amicus”) respectfully submits this Brief in Opposition to Defendants’ Motion to Seal Plaintiff’s Opposition to Defendants’ Anti-SLAPP Motions and the Declaration of David S. Godkin In Opposition to Defendants’ Anti-SLAPP Motions, including all exhibits filed therewith. As detailed herein and in the papers filed by Plaintiff and the Defendants, there is no dispute that this matter “greatly implicates the public interest.” *See, e.g.*, Facebook’s Special Motion to Strike (Anti-SLAPP), filed on November 21, 2017, at 2; Plaintiff’s Fifth Amended Complaint (“5AC”), ¶ 6. Over 2 billion people have relied upon or continue to rely upon Defendants to manage Facebook Platform in a manner that respects the privacy of their digital information and ensures their ownership and control over data they upload to the Platform. Further, tens of millions of businesses rely upon Facebook Platform, which is one of the largest economies globally with an economic impact dwarfing the GDP of most sovereign nations, according to Facebook’s own estimates.¹ Amicus has [hundreds of thousands or millions] readers or subscribers, many of whom are personally affected by the issues raised in this matter. All of these readers or subscribers have a strong interest in full disclosure regarding Defendants’ management of data, particularly third party access to data.

As a result of media organizations reporting on Facebook Platform in 2018, a number of governments have opened investigations into Facebook’s management of its Platform with a particular focus on its management of user data and third party data access in the 2011 to 2015 timeframe. According to public announcements, government entities currently investigating Facebook’s management of Platform and third party data access include the Attorneys General of California, Massachusetts, Mississippi, Missouri, New Jersey, New York, Oregon, and

¹ *See, e.g.*, <https://newsroom.fb.com/news/2015/01/new-deloitte-report-looks-at-facebooks-impact-on-global-economy-jobs/>.

1 Washington; the United States Federal Trade Commission; and various European governments
2 and regulatory authorities.² If true, Plaintiff’s allegations would directly refute a wide range of
3 statements Defendants have made in 2018 in response to inquiries by government authorities and
4 media organizations regarding its management of Platform from 2011 to 2015. As a respected
5 national media organization, Amicus has a strong interest and obligation to the public to report on
6 these matters fully and truthfully. Therefore, Amicus respectfully requests the Court deny
7 Facebook’s Motion to Seal as to all evidence submitted by Plaintiff in Opposition to Defendants’
8 Anti-SLAPP Motions that is more than three years old and contains no bank statements or
9 account information, source code, non-public financial information, trade secrets, national
10 security matters or sensitive personal information, such as credit card or social security data.

11 STATEMENT OF FACTS

12
13 Amicus adopts and incorporates by this reference the statement of facts set forth in
14 Plaintiff’s Memorandum of Points and Authorities in Opposition to Defendants’ Motion to Seal.
15 Further, Amicus adopts and incorporates by this reference the following exhibits to Plaintiff’s
16 Request for Judicial Notice (“RJN”) filed on May 17, 2018:

- 17
18 1. RJN Exhibits 1-27 – These exhibits consist of official statements, publications and
19 records by Facebook regarding Facebook Platform from 2007 through 2018.
20
21

22
23 ² See [https://ago.mo.gov/home/breaking-news/ag-hawley-issues-investigative-demands-to-](https://ago.mo.gov/home/breaking-news/ag-hawley-issues-investigative-demands-to-facebook)
24 [facebook](https://ago.mo.gov/home/breaking-news/ag-hawley-issues-investigative-demands-to-facebook); [https://ag.ny.gov/press-release/statement-ag-schneiderman-facebookcambridge-](https://ag.ny.gov/press-release/statement-ag-schneiderman-facebookcambridge-analytica)
25 [analytica](https://ag.ny.gov/press-release/statement-ag-schneiderman-facebookcambridge-analytica); [http://www.ago.state.ms.us/releases/ag-hood-investigating-facebooks-user-privacy-](http://www.ago.state.ms.us/releases/ag-hood-investigating-facebooks-user-privacy-practices/)
26 [practices/](http://www.ago.state.ms.us/releases/ag-hood-investigating-facebooks-user-privacy-practices/); <http://nj.gov/oag/newsreleases18/pr20180507b.html>; [https://oag.ca.gov/news/press-](https://oag.ca.gov/news/press-releases/attorney-general-becerra-calls-facebook-protect-users-data)
27 [releases/attorney-general-becerra-calls-facebook-protect-users-data](https://oag.ca.gov/news/press-releases/attorney-general-becerra-calls-facebook-protect-users-data); [https://www.doj.state.or.us/](https://www.doj.state.or.us/media-home/news-media-releases/ag-rosenblum-joins-coalition-demanding-answers-from-facebook/)
28 [media-home/news-media-releases/ag-rosenblum-joins-coalition-demanding-answers-from-](https://www.doj.state.or.us/media-home/news-media-releases/ag-rosenblum-joins-coalition-demanding-answers-from-facebook/)
[facebook/](http://nwnewsnetwork.org/post/washington-oregon-attorneys-general-demand-answers-facebook); [http://nwnewsnetwork.org/post/washington-oregon-attorneys-general-demand-](http://nwnewsnetwork.org/post/washington-oregon-attorneys-general-demand-answers-facebook)
[answers-facebook](https://www.ftc.gov/news-events/press-releases/2018/03/statement-acting-director-ftcs-bureau-consumer-protection); [https://www.ftc.gov/news-events/press-releases/2018/03/statement-acting-](https://www.ftc.gov/news-events/press-releases/2018/03/statement-acting-director-ftcs-bureau-consumer-protection)
[director-ftcs-bureau-consumer-protection](https://ico.org.uk/about-the-ico/news-and-events/news-and-blogs/2018/05/ico-statement-investigation-into-data-analytics-for-political-purposes/); [https://ico.org.uk/about-the-ico/news-and-events/news-](https://ico.org.uk/about-the-ico/news-and-events/news-and-blogs/2018/05/ico-statement-investigation-into-data-analytics-for-political-purposes/)
[and-blogs/2018/05/ico-statement-investigation-into-data-analytics-for-political-purposes/](https://ico.org.uk/about-the-ico/news-and-events/news-and-blogs/2018/05/ico-statement-investigation-into-data-analytics-for-political-purposes/).

2. RJN Exhibits 28-35 – These exhibits consist of official records and communications between the United States Federal Trade Commission and Facebook regarding Facebook Platform and management of user data, including third party access to data, from 2011 to 2012.
3. RJN Exhibits 52-67 – These exhibits consist of public statements and representations by Facebook’s senior executives to various media organizations primarily in the 2010 to 2014 timeframe.
4. RJN Exhibits 72-200 – These exhibits consist of articles published by nationally recognized media organizations regarding Facebook Platform and management of user data, reporting on many of the issues raised in the instant matter, from 2007 to 2018.

As Plaintiff’s RJN demonstrates, the issues at the heart of this case have been widely reported on in the media. Further, Defendants have voluntarily made statements and representations to the media since 2007 regarding these issues and have therefore brought these issues into the public sphere of their own accord. Amicus incorporates into the record the fact of Defendants’ publications and statements, and the associated media coverage, from 2007 to 2018, while taking no position on the truth or falsity of Defendants’ representations. Additional facts and citations to the record will be provided in the body of the argument as necessary.

ARGUMENT

I. Legal Standard

California recognizes a First Amendment right of access to civil litigation documents filed in court as a basis for adjudication of a non-discovery motion, such as this Anti-SLAPP Motion. *See* C.R.C. 2.550 and 2.551; *Overstock.com, Inc. v. Goldman Sachs Group, Inc.* (2014) 231 Cal.App.4th 471, 485 [180 Cal.Rptr.3d 234]. Any sealing issues raised by the parties are to be

1 resolved contemporaneous with the substantive underlying motion and shall not be delayed. *Id.*,
2 at 473 (“Cal. Rules of Court, rule 2.550(a)(3), cannot be read in a way that necessarily delays the
3 resolution of sealing issues until after a trial court rules on the merits. Indeed, the courts have
4 expressed concern about delayed rulings on sealing issues”); 495-496 (“access should be
5 immediate and contemporaneous”) (quotations omitted). Prior sealing orders are subject to
6 “continuing review and modification by the trial judge” to ensure an “evolving view of the
7 propriety of sealing.” *Id.*, at 482-483. The constitutional right of access to materials submitted as
8 a basis for adjudication applies to all submitted materials regardless of whether the trial court
9 relies upon them when ruling so long as they are not “irrelevant” to the matter being adjudicated
10 (e.g., the *Overstock* court held that the bank balance of a party was irrelevant to the plaintiff’s
11 arguments in support of its case). *Id.*, at 473, 492, 508. An order denying a motion to seal or an
12 order granting a motion to unseal does not require express factual findings, but an order granting
13 a motion to seal does. *Id.*, at 488. A party, the Court, or ***any member of the public*** may seek to
14 unseal materials submitted in support of or in opposition to any substantive, non-discovery
15 motion. *See* C.R.C. 2.551(h)(2) (emphasis added).

18 Once the sealed record rules are triggered, as they are here, “court records are presumed to
19 be open” and the Court “may order a record sealed only upon making express findings that (1)
20 there exists an overriding interest that overcomes the right of public access to the record; (2) the
21 overriding interest supports sealing the record; (3) a substantial probability exists that the
22 overriding interest will be prejudiced if the record is not sealed; (4) the proposed sealing is
23 narrowly tailored; and (5) no less restrictive means exist to achieve the overriding interest.” *See*
24 *Overstock* (2014) 231 Cal.App.4th at 487; Rule 2.550(c)-(d). The Court must make express factual
25 findings supporting the sealing order and failure to do so makes the “order deficient”. *See*
26 *Overstock* (2014) 231 Cal.App.4th at 487; Rule 2.550(e)(1)(A).

1 **II. Defendants’ Motion to Seal Should Be Denied As the Public Has a Strong Interest In**
2 **Determining the Veracity of Plaintiff’s Allegations**

3 The 5AC includes a wide range of allegations regarding issues that have been widely
4 reported on in the media, and the public has a strong interest in getting to the bottom of these
5 issues. This interest is heightened by the fact that three of the Defendants (Zuckerberg, Cox and
6 Olivan) to this day maintain control over Facebook’s products and services. In fact, two of the
7 Defendants (Cox and Oliván) were promoted in May 2018 to expand their control over virtually
8 all of Facebook’s products and services; at the same time, Facebook announced plans to build
9 new platforms.³ In light of Defendants ongoing control over the data of more than 2 billion
10 people, the public has a strong interest in evidence pertaining to the following allegations:

- 11
- 12 1. The 5AC alleges that in 2011 and 2012 Zuckerberg held discussions with a select group
13 of executives in which they agreed upon a scheme to weaponize user data and violate
14 user privacy in order to transition Facebook’s collapsing desktop advertising business to
15 mobile advertising using a vague policy called “reciprocity”. 5AC ¶¶ 85, 209. These
16 issues have been reported in the media. *See, e.g.*, Plaintiff’s RJN, Exs. 72, 76, 81. Further,
17 any evidence submitted in support of these allegations is now more than five years old
18 and should be released to the public.
- 19
- 20 2. The 5AC alleges that in late 2012 and early 2013, Zuckerberg instructed senior
21 executives to continue to induce third parties to rely on data Zuckerberg had already
22 decided to privatize while approaching a select group of companies to shut down under
23

24 ³ Facebook announced in May 2018 an executive management reshuffle that consolidates the
25 power of Cox and Oliván in the company and creates an entire division at the company devoted to
26 building new “platforms.” *See, e.g.*, [https://www.vanityfair.com/news/2018/05/facebook-](https://www.vanityfair.com/news/2018/05/facebook-executive-reorganization)
27 [executive-reorganization](https://www.vanityfair.com/news/2018/05/facebook-executive-reorganization) (Facebook announces executive reshuffle on May 8, 2018 in which Cox
28 now oversees Facebook, Instagram, WhatsApp and Facebook Messenger, and Oliván oversees all
 other central product services including growth, advertising, security, integrity, privacy and other
 critical functions).

1 the guise of the reciprocity policy in order to force them to buy unrelated mobile ads.
2 5AC ¶¶ 85, 211-213, 238, 295. These issues have been reported in the media. *See, e.g.*
3 Plaintiff's RJN, Exs. 72, 152. Further, any evidence submitted in support of these
4 allegations is now more than five years old and should be released to the public.
5

6 3. The 5AC alleges that in 2013 Facebook expanded its scheme to weaponize user data by
7 blacklisting and whitelisting companies based on their willingness to purchase mobile ads
8 and their degree of competitiveness with Facebook's own future products in order to
9 determine the winners and losers in a wide range of consumer software markets,
10 including messaging, professional services, contact management, gifting, payment,
11 sharing economy, utility, file sharing, birthday reminder, photo and video, calendar,
12 lifestyle and health and fitness apps. 5AC ¶¶ 16-18, 88-90, 212. These issues regarding
13 anti-competitive conduct have been reported in the media. *See, e.g.*, Plaintiff's RJN, Exs.
14 72, 152. Further, any evidence submitted in support of these allegations is now more than
15 four years old and should be released to the public.
16

17 4. The 5AC alleges that in the second half of 2013 and first half of 2014 Defendants created
18 and disseminated a fraudulent narrative that falsely portrayed major Platform changes
19 announced on April 30, 2014 as being justified by user privacy concerns in order to wipe
20 out 40,000 consumer software applications to make way for Facebook's new products
21 and services. 5AC ¶¶ 23-27, 85, 223-226. These issues regarding anti-competitive
22 conduct have been reported in the media. *See, e.g.*, Plaintiff's RJN, Exs. 72, 152, 165.
23 Further, any evidence submitted in support of these allegations is now more than four
24 years old and should be released to the public.
25

26 5. The 5AC alleges that from 2012 to 2015, Defendants used Facebook's willful failure to
27 implement proper privacy controls to violate the privacy of hundreds of millions of
28

1 consumers in a wide range of projects, including projects widely reported in the media
2 like tracking competitors using improperly obtained Onavo data, tracking the text and call
3 logs of Android users without consent, developing shadow profiles of non-Facebook
4 users by tracking their text and call logs without consent, turning the Bluetooth setting on
5 the phone on without user permission, causing privacy settings to lapse after a period of
6 time, and willfully ignoring privacy settings for certain popular Facebook features. 5AC
7 ¶¶ 226-233. *See, e.g.*, Plaintiff's RJN, Exs. 99, 138, 141, 172, 176, 181, 183.

9 The public has a fundamental interest in determining the veracity of these allegations, which
10 cannot be overridden by any legitimate interest Defendants may have to keep the records sealed.
11 In fact, if Defendants' representations are true, then unsealing the evidence will vindicate
12 Defendants, which the public also has a strong interest in knowing given the immense trust the
13 public places in Defendants to safeguard their digital identities and personal information.

15 **III. Defendants Cannot Meet the Stringest Requirements of Rule 2.550(d)**

16 Defendants contend that their overriding interest in sealing Plaintiff's Opposition to
17 Defendants' Anti-SLAPP Motion and Plaintiff's supporting declaration and exhibits arises out of
18 the fact that they contain Facebook's internal strategic analyses and business discussions, the
19 release of which could damage Facebook's business and business relationships and its
20 relationships with third parties. Defendants provide no additional information regarding how and
21 why any specific document will damage any current business relationship. Defendants further
22 provide no nexus between information that is now more than three years and up to ten years old
23 and any current legitimate interest Facebook may have today. Defendants do not identify any
24 specific information as being subject to any ongoing confidentiality obligation under a currently
25 enforceable contract with a third party.
26
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1 Rather, Defendants have asserted generically that they have an overriding interest in
2 avoiding embarrassment to their business reputation and in preventing the release of information
3 that may or may not implicate them in unlawful conduct. *See, Huffy Corp. v. Superior Court*
4 (2003) 112 Cal.App.4th 97, 108 [4 Cal.Rptr.3d 823] (“Defendant has failed to demonstrate an
5 overriding interest to permit sealing this type of admission.... [N]o overriding public interest
6 warrants secreting from the public documents filed in its courts that there may have been
7 violations of...laws.”); *McNair v. National Collegiate Athletic Assn.* (2015) 234 Cal.App.4th 25,
8 35-36 [183 Cal.Rptr.3d 490] (“There must be a specific showing of serious injury. [S]pecificity is
9 essential. Broad allegations of harm, bereft of specific examples or articulated reasoning, are
10 insufficient.”) (quotations and citations omitted). No court has found an overriding interest under
11 Rule 2.550(d) in discussions, emails and documents that: (1) are more than three years old, and in
12 many cases five or six years old; (2) contain no personally identifiable information, bank
13 statements or accounts, source code, financial information, trade secrets, or material subject to a
14 current confidentiality or contractual obligation; and (3) concern conduct that has been widely
15 and voluntarily disclosed by Defendants in the public sphere and the media.⁴ A much higher

19 ⁴ *See, e.g., Overstock* (2014) 231 Cal.App.4th at 482 (“The court next concluded, as to a
20 significant number of the materials, defendants' declarations were conclusory and
21 unpersuasive, and lacked the specific facts necessary to support sealing. The court additionally
22 concluded plaintiffs had persuasively show[n] many of the documents no longer had sufficient
23 indicia of confidentiality to warrant sealing. In sum, [g]iven (1) that this case was filed in
24 February 2007, more than five years ago, (2) that most, if not all, of the transactions reflected
25 in the documents are at least four years old, (3) that many of the allegedly confidential
26 business practices and trading strategies are outdated due to changes in federal law, and (4)
27 that much of the material at issue was publicly disclosed at the January 5, 2012 hearing on the
28 motions for summary judgment, the trial court observed, defendants' failure to present specific
facts to justify sealing the documents at issue is understandable.”) (quotations and citations
omitted); *H.B. Fuller Co. v. Doe* (2007) 151 Cal.App.4th 879, 894-898 [60 Cal.Rptr.3d 501]
(party seeking to seal records “never identified any specific facts disclosure of which would
harm any identified interest” but instead simply stated that the material included its “business
strategy and forecasts, competitive outlook, [and] product development” without identifying
anything “that discloses information in any of these categories”).

1 burden is required by California courts for a party to establish an overriding interest under Rule
2 2.550(d)(1), particularly when that interest seeks to prevent public access to materials submitted
3 in opposition to a motion seeking final judgment. *See NBC Subsidiary (KNBC-TV), Inc. v.*
4 *Superior Court* (1999) 20 Cal.4th 1178, 1222, fn. 46 [86 Cal.Rptr.2d 778, 980 P.2d 337] (citing
5 cases in which an overriding interest has been found that entail interests much more extreme and
6 protected than that which Defendants assert here, such as the protection of minors from trauma or
7 the safeguarding of trade secrets or national security matters).

9 Further, Defendants cannot meet their burden under Rule 2.550(d)(2) because, even if
10 Defendants had identified an overriding interest, such an interest would necessitate *unsealing* the
11 record based on Defendants' own arguments in their Anti-SLAPP Motion that the conduct at
12 issue greatly implicates the public interest and was undertaken in furtherance of Defendants' First
13 Amendment rights to free speech. Finally, Defendants' argument that their proposal is narrowly
14 tailored is specious, and there are less restrictive means to achieve any legitimate overriding
15 interest if Defendants are able to identify one. Defendants' Motion to Seal sweeps up whole cloth
16 the content of every document, email and deposition testimony produced by Defendants or their
17 employees cited in opposition to the Anti-SLAPP Motion. Defendants' proposal could not
18 possibly be less narrow and further makes no attempt to identify specific information that would
19 cause direct and identifiable harm to Defendants if released. Further, there are clearly less
20 restrictive means to achieve any legitimate overriding interest Defendants may have in preserving
21 their relationships with third parties.

24 If Defendants had articulated clearly how any specific piece of information jeopardizes a
25 specific, ongoing contractual commitment, then this would have guided the Court to parse the
26 evidence to satisfy any legitimate concerns Defendants may have. However, Defendants opted
27

1 not to identify materials with specificity and therefore cannot meet their burden under Rule
2 2.550(d)(4)-(5). *Overstock* (2014) 231 Cal.App.4th at 500 (“Finally, on the other side of the
3 equation the trial courts can, and should, view overly inclusive sealing efforts with a jaundiced
4 eye, and impose sanctions as appropriate.”); *Williams v. U.S. Bank N.A.* (E.D.Cal. 2013) 290
5 F.R.D. 600, 606, fn. 9, italics omitted (threatening sanctions when “defendant made no effort at
6 all to seal only those portions of the substantive exhibits that it actually wanted to protect as
7 confidential”). Defendants are required to satisfy all five prongs of Rule 2.550(d) and yet their
8 Motion to Seal cannot satisfy any of these prongs.

10 CONCLUSION

11 For the foregoing reasons, Defendants’ Motion to Seal should be denied.

14 DATED:

[ATTORNEY FIRM OR ORGANIZATION
NAME]

16 By: _____

[Attorney Name]

Attorney for Amicus Curiae

[Organization Name]

EXHIBIT 29

From: James Kruzer
Sent time: 05/17/2018 07:11:58 PM
To: [REDACTED]@wsj.com; [REDACTED]@wsj.com; [REDACTED]@wsj.com
Cc: David Godkin; Thomas Scaramellino <thomas.scaramellino@gmail.com>; Ted Kramer <ted@six4three.com>
Subject: Six4Three v. Facebook Application and Amicus Brief
Attachments: 01 Opp to Anti-SLAPP Motions_180510 - public.pdf 01a DSG Decl. ISO opp to Anti-slapp motions w all exs. - Public.pdf Application for Leave to File Amicus Brief [template].docx

Dear [REDACTED]

Please find attached the redacted brief and redacted supporting declaration we filed today in Opposition to Defendants' Anti-SLAPP Motion. The unredacted versions of these documents include approximately 3,000 pages of evidence we are seeking to unseal at the July 2 hearing.

Please also find attached a draft Application for Leave to File Amicus Brief and the Amicus Brief itself as Exhibit A to the Application. This is a template that The Wall Street Journal should feel free to modify as it sees fit and is intended solely to reduce the amount of time and money you need to spend in researching California state law and preparing the brief from scratch.

The brief makes clear that The Wall Street Journal takes no position on the claims and defenses in the case and supports neither Party. Rather, your organization's sole purpose in filing the brief is to examine the evidence in light of the strong public interest in getting to the bottom of Facebook's management of user data, particularly regarding third party access from 2012 to 2015.

Please let us know when you and/or your counsel might be available for a call to discuss the brief and filing process. A few items are worth mentioning at the outset:

- The brief must be filed with the clerk no later than June 6 to be heard on July 2. Many clerks in California trial courts are not familiar with amicus filing procedures, though filing an amicus brief is clearly permitted at the Court's discretion.
- We recommend filing with the clerk well in advance of the June 6 deadline in case the clerk needs to be educated on this procedure. We are happy to assist in this.
- We also recommend filing a courtesy copy directly with the Judge to ensure he is aware of your intent to file the brief.
- The hearing is on July 2 at 9:00 am in Department 23 of the San Mateo Superior Court at 400 County Center, Redwood City, CA. We recommend having reporters at the hearing as the substantive motions will be argued at that time.

Please contact me any time with any questions. I look forward to hearing from you.

Regards,

Jim Kruzer

BG006427

EXHIBIT 30

From: James Kruzer
Sent time: 05/17/2018 07:23:39 PM
To: [REDACTED]@ap.org
Cc: David Godkin; Ted Kramer <ted@six4three.com>; Thomas Scaramellino <thomas.scaramellino@gmail.com>
Subject: Six4Three v. Facebook Application and Amicus Brief
Attachments: Application for Leave to File Amicus Brief [template].docx 01 Opp to Anti-SLAPP Motions_180510 - public.pdf 01a DSG Decl. ISO opp to Anti-slapp motions w all exs. - Public.pdf

Dear [REDACTED]

Please find attached the redacted brief and redacted supporting declaration we filed today in Opposition to Defendants' Anti-SLAPP Motion. The unredacted versions of these documents include approximately 3,000 pages of evidence we are seeking to unseal at the July 2 hearing.

Please also find attached a draft Application for Leave to File Amicus Brief and the Amicus Brief itself as Exhibit A to the Application. This is a template that The Associated Press should feel free to modify as it sees fit and is intended solely to reduce the amount of time and money you need to spend in researching California state law and preparing the brief from scratch.

The brief makes clear that The Associated Press takes no position on the claims and defenses in the case and supports neither Party. Rather, your organization's sole purpose in filing the brief is to examine the evidence in light of the strong public interest in getting to the bottom of Facebook's management of user data, particularly regarding third party access from 2012 to 2015.

Please let us know when you and/or your counsel might be available for a call to discuss the brief and filing process. A few items are worth mentioning at the outset:

- The brief must be filed with the clerk no later than June 6 to be heard on July 2. Many clerks in California trial courts are not familiar with amicus filing procedures, though filing an amicus brief is clearly permitted at the Court's discretion.
- We recommend filing with the clerk well in advance of the June 6 deadline in case the clerk needs to be educated on this procedure. We are happy to assist in this.
- We also recommend filing a courtesy copy directly with the Judge to ensure he is aware of your intent to file the brief.
- The hearing is on July 2 at 9:00 am in Department 23 of the San Mateo Superior Court at 400 County Center, Redwood City, CA. We recommend having reporters at the hearing as the substantive motions will be argued at that time.

Please contact me any time with any questions. I look forward to hearing from you.

Regards,

Jim Kruzer

BG006428

EXHIBIT 31

From: Thomas Scaramellino <thomas.scaramellino@gmail.com>
Sent time: 06/01/2018 12:25:20 PM
To: [REDACTED]@politico.eu>
Cc: James Kruzer; David Godkin; Stuart Gross <sgross@grosskleinlaw.com>
Subject: Re: FB Motion to Seal

[REDACTED] will Politico be joining the Guardian's filing on this or participating in some other fashion? Briefs should be filed by Tues. We've made clear that we will only be working with organizations who support making this evidence public and having an informed and transparent debate on these critical issues. Please advise by end of day.

On Thu, May 31, 2018 at 9:18 AM, Thomas Scaramellino <thomas.scaramellino@gmail.com> wrote:

We are still waiting to hear back from the clerk. Most likely scenario is we stick with current plan of filing amicus brief. They filed their belated motion to seal late last night. Please see attached. Let's setup a call to discuss. I am very busy today but perhaps one of the other attorneys has time. Are you working with Guardian or another group on joining an amicus brief? Best, Tom

BG002172

**[Redacted Version of
Document Proposed to
be Filed under Seal]**

EXHIBIT 32

From: Thomas Scaramellino <thomas.scaramellino@gmail.com>
Sent time: 05/22/2018 11:14:08 AM
To: [REDACTED]@theguardian.com; [REDACTED]@mkslex.com>
Cc: David Godkin; James Kruzer; Theodore Kramer <Theodore.Kramer@gmail.com>
Subject: Follow up from call

Attachments: Dec 2016 Karesh order 1.pdf Dec 2016 Karesh order 2.pdf Sept 15 2016 Karesh discovery order.pdf CIV533328_CMC#5 Order Sept 11 2017 discovery.pdf 2016-06-30 081 Order on Demurrer re Second Amended Complaint.pdf 2017.10.20 Facebook's Supp. Resp. to Six4Three's RFPs Set 3_NO DATA RECIPROCITY POLICY.pdf a2017-03-03 643 Third Set of Demands for Inspection of Documents.pdf 2016-08-25 103 Facebook 2nd Supp Objs-Resps to 1st Doc Request.pdf 03 2017-01-20 Portion of Joint Submission REDACTED (2).pdf 2018.01.19 FINAL Individual Defendants Peremptory Challenge per CCP 170.6.pdf 2016-10-24 Signed Protective Order.pdf FILED Corrected Opp to Individual Defendants Anti-SLAPP.pdf

BACKGROUND | NON-ATTRIBUTION (EXCEPT WHERE OTHERWISE NOTED)

Hi all, following up on our call, please see the information you requested below. [REDACTED], pls pass along to [REDACTED] as I don't seem to have her email readily available. Keep us posted on plans and hoping we get a positive decision from the U.S. Guardian soon regarding filing a brief to make the evidence public. It is critical that we don't make this a huge story and then have no support helping us to fight back with the benefit of the evidence. It will create a very difficult environment for both Ted and the various attorneys working on this case. We will wait to hear from you on that front.

On record comment from David Godkin, Lead Counsel for six4three:

"We have no comment to the media at this time other than to say that we are opposing Facebook's efforts to seal certain evidence on July 2 before the San Mateo Superior Court because we believe the public has a right to see the evidence and are confident the evidence clearly demonstrates the truth of our allegations, and much more."

Legal background (source: [public docket](#) - this procedural history is all in the public docket online and that should be the source for it. certain public documents you asked for on call are attached here):

The case was first filed in April 2015, right as the Graph API 2.0 changes went into effect. The San Mateo County Superior Court has ruled that the developer has viable claims as to California's unfair competition law, various fraud and tort claims, as well as a breach of contract claim. When the judge ordered Facebook to produce key documents in late 2016, Facebook fired their first law firm, delaying the production by a number of months. Then, on the eve of their deadline to file any summary judgment motions in January 2017, Facebook without any basis removed the case to federal court to vacate the original May 2017 trial date only to have the case remanded back to state court just one month later. Unfortunately, California courts are so backed up that the next available trial date was not until April 2019 (two years after the original trial date and four years after the case was first filed). Then, in late 2017, days before Facebook was required by the court to produce certain Zuckerberg emails on December 7, 2017, Facebook filed an anti-SLAPP motion under California's SLAPP statute, which was enacted to eliminate frivolous lawsuits attempting to infringe on free speech rights in the first 60 days of a case. Facebook waited 1,000 days after the case began to file their anti-SLAPP motion, which papers in the case indicate is the latest filed anti-SLAPP motion on record in California. Then, after a hearing in which the judge indicated that Facebook's anti-SLAPP motion might be untimely, that same week Facebook used a rare provision in California law to disqualify the judge by attesting under penalty of perjury that she was prejudiced against Facebook, even though she had previously prevented the developer from adding Zuckerberg and others as defendants in the case. The developer was required to seek a writ of mandamus from a California appellate court, which reversed the lower court's decision and required the lower court to name Zuckerberg and five other executives as defendants in 2017. On July 2, the Court will determine if Facebook can continue to shield this evidence from public view in light of its clear relevance to getting to the bottom of Cambridge Analytica and a wide range of other reported privacy and monopoly issues related to Facebook's management of user data.

Further, even though it is public knowledge that Facebook published a [reciprocity policy](#) (see I.10) on [January 25, 2013](#), Facebook's lawyers for three years now have claimed in multiple verified discovery responses (under penalty of perjury) that Facebook *never* had a reciprocity policy and that there are no internal Facebook emails that contain the words "reciprocity policy," a rather remarkable claim in light of the fact that the announcement of this policy is a matter of public record and [easily verifiable on the Internet](#).

Facebook's aggressive delay tactics stalling this case for over three years may now be working against it, as the timing of a judge's decision to release documents on July 2 comes right as Facebook is trying to assure the public of its response to the Cambridge Analytica scandal. The public has a right to the evidence uncovered in this case as it is critical to this ongoing debate around digital privacy and monopoly, including the many ongoing investigations into Facebook's handling of user data. If Facebook's response to Cambridge Analytica is true, then why is Facebook trying so hard to prevent this information from coming to light if it would vindicate Facebook's statements to the media these past few months?

Ted's company, six4three (source: [public docket](#) - this information is all in briefs in the public docket)

Developer alleges that it was shut down based on Zuckerberg's fraudulent scheme decided upon in 2012 and that most all developers

using Facebook Platform from 2012 on were living on borrowed time and all their investment of time and money was inevitably going to

the app until it got sued by the developer, so it's quite ironic that Facebook is now on its moral high horse). Facebook no doubt will use its media influence to further malign the developer. It already appears to have done so. In March, a tech editor at Bloomberg published a piece that looked like it had been drafted directly by Facebook on the case without consulting Bloomberg's Facebook beat reporter or asking the developer for comment. That same week Bloomberg did an exclusive interview with Sheryl Sandberg. Hard to see how there wasn't a quid pro quo there.

The developer was a seed stage startup called six4Three (643). It was a computer vision technology that ultimately wanted to build a business identifying brands and clothing in photos for e-commerce and marketing purposes. Imagine if you could tap on a shirt in any photo on Facebook and buy it right away because the software automatically recognized the shirt. It was building up a photos database to train its algorithms and its early research showed that people were frustrated viewing photos on Facebook because it was hard to filter them to see the ones you want. So all this app did was put a filter on the photos you already had access to on Facebook to find the ones where your friends were having fun in the summer, at the beach, pool or on a boat, since research showed that this was what most people were using Facebook photos for anyway and so it could help the company train its algorithms to build its core products. The app took great care to respect user privacy and never violated it. Users could only see photos they could already see on Facebook. If Facebook took down an offensive photo, the app took it down as well. Unlike Cambridge Analytica, Facebook never took issue with

It's a red herring Facebook uses as a sideshow to attempt to distract the media from its own conduct, arguably the most anti-competitive and privacy-violating scheme in the history of software in terms of its impact on the broader economy, consumer choice, consumer control over data, and the ability to have a competitive consumer software market.

Questions we gave [REDACTED] for MPs:

What was the reciprocity policy? Why did Facebook implement the reciprocity policy and what did it require or prohibit? Did Facebook ever use the reciprocity policy to gain leverage over competitors or to force a company to buy advertising in order to continue to access APIs Facebook claimed were publicly available free of charge? Did you ever direct a Facebook employee to shut down a company under the reciprocity policy that had not violated user privacy or any other Facebook policy? What types of companies did the reciprocity policy apply to? What specific companies?

Did Facebook's APIs pass the privacy setting of a piece of data when transmitting that data to a third party? If I'm a third party accessing the friends photos API, for instance, in 2014, and the user has consented to having her friends access her photos in my app, would Facebook's API have also sent me all the privacy settings on those photos so I knew how to properly handle them and who could view them in my own app?

Did Facebook ever ignore privacy settings of a user for its own features in the Facebook app or on the Facebook website?

Facebook represented that a company did not have to buy advertisements in order to access the Platform APIs Facebook chose to make freely available to these third parties, correct? In light of this, did Facebook ever use its Platform APIs, particularly those that transmit user data, as leverage to force a company to buy advertisements?

It has been reported in the media that Facebook tracked the texts and calls of Android users in 2015 and 2016. Is that when this program to track calls and texts began? When did Facebook first start tracking these texts and calls? When Facebook first started tracking these texts and calls, did it obtain the approval of Facebook's privacy department? Did it update the Android permissions dialog to make clear in the dialog that this was a new set of permissions the user was granting?

Did Facebook ever use the texts and calls of Android users to create profiles of non-Facebook users, where Facebook would store this information about non-users to supplement its internal graph of social connections?

When Facebook announced [Graph API 2.0 on April 30, 2014](#), I noticed that there is only a single line at the bottom of the announcement that says "In addition to the above, we are removing several rarely used endpoints...." These endpoints were the ones that Professor Kogan and Cambridge Analytica had accessed, correct? So this includes all the APIs that transmitted friend data? How many APIs were in this category? Is it true that all of these APIs were "rarely used" at the time? How would you define "rarely used"? These APIs were first introduced in 2007, right, or at least by 2010? So most of these APIs had been around for at least four and up to seven years at this time, right? And how many developers relied on these APIs? So it seems like it's a pretty big change you're announcing here - is there a reason it was buried in a one line statement at the very end of an extremely long announcement?

FILED
SAN MATEO COUNTY

SEP 19 2016

Clerk of the Superior Court
By [Signature]
DEPUTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN MATEO

SIX4THREE, LLC, a Delaware limited
liability company,

Plaintiff,

v.

FACEBOOK, INC., a Delaware
corporation and DOES 1-50, inclusive

Defendants.

Case No. CIV533328

**ORDER ON MOTION FOR
ORDER COMPELLING FURTHER
RESPONSES TO DEMAND FOR
INSPECTION OF DOCUMENTS,
COMPELLING PRODUCTION OF
DOCUMENTS, AND FOR SANCTIONS**

Date: September 8, 2016

Time: 9:00 a.m.

Dept.: Law and Motion

CIV533328
ORD
Order
189307



[PROPOSED] ORDER ON MOTION TO COMPEL
CASE NO. CIV533328

BG000510

1 Plaintiff Six4Three, LLC's ("Six4Three") Motion For Order Compelling Further
2 Responses To Demand For Inspection Of Documents, Compelling Production Of Documents,
3 And For Sanctions (the "motion") came on regularly for hearing before the Court on September
4 8, 2016, in the Law and Motion Department.

5 The Court, having reviewed the moving papers and all opposing and reply papers filed
6 with the Court, and having heard the arguments of counsel, grants in part and denies in part the
7 motion as follows:

8 The motion is MOOT as to Document Requests Nos. 6, 7, 9, 11, 13, 14, 20, 21 and 22.
9 Subsequent to the filing of this motion, on August 25, 2016, Defendant Facebook provided a
10 second supplemental response to the request for production, withdrawing some objections and
11 agreeing to produce additional documents [See Exhibit C attached to the declaration of counsel
12 Julie Schwartz]. To the extent this supplemental response modified their responses to these
13 requests, the motion is moot.

14 The motion is DENIED as to Requests Nos. 1, 2, 3, 4, 31 and 32 as Defendant Facebook
15 has agreed to provide responsive, non-privileged documents in response to these requests. [See
16 Exhibit F, attached to the Declaration of David Godkin.] As to privileged documents, Defendant
17 is to produce a privilege log in compliance with CCP §2031.240.

18 The motion is DENIED as to Requests Nos. 17, 27 and 28.

19 The motion is GRANTED as to Requests 8, 12, 16.

20 The motion is GRANTED as to Requests Nos. 5, 10, 15, 18, 19, 23, 24, 25 and 26 subject
21 to a privilege log in compliance with CCP §2031.240.

22 The motion is GRANTED as to Requests Nos. 30, 33 [34 is not part of Plaintiff's motion]
23 subject to a privilege log in compliance with CCP §2031.240.

24 Defendant shall complete its production of documents within 45 days of the date of this
25 Order. On or before this 45-day time period expires, Defendant may seek relief from the Court.

26 The request for sanctions is denied, as the Court finds that Defendant acted with
27 substantial justification in responding to the Plaintiff's Request for Production of Documents and
28 in opposing this Motion.

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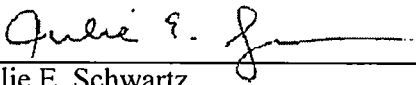
IT IS SO ORDERED.

Dated: **SEP 15 2016**


HONORABLE JONATHAN KARESH

Approved as to form by:

PERKINS COIE LLP


Julie E. Schwartz

BIRNBAUM & GODKIN, LLP

David S. Godkin

1 Basil P. Fthenakis, Esq. (88399)
CRITERION LAW
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5 Of counsel:

6 David S. Godkin (admitted *pro hac vice*)
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7 BIRNBAUM & GODKIN, LLP
280 Summer Street
8 Boston, MA 02210
(617) 307-6100
9 godkin@birnbaumgodkin.com
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10 Attorneys for Plaintiff,
11 SIX4THREE, LLC, a Delaware
limited liability company
12

13 SUPERIOR COURT OF CALIFORNIA

14 COUNTY OF SAN MATEO
15

16 SIX4THREE, LLC, a Delaware limited
17 liability company,

18 Plaintiff,

19 v.

20 FACEBOOK, INC., a Delaware corporation
and DOES 1 through 50, inclusive

21 Defendants.
22

) 643'S DISCOVERY PROPOSAL
) PURSUANT TO COURT'S DECEMBER
) 13, 2016 ORDER

) HEARING DATE: n/a
) HEARING TIME: n/a
) DEPARTMENT: Law and Motion
) FILING DATE: April 10, 2015
) TRIAL DATE: May 15, 2017
)

23 **REDACTED PUBLIC VERSION**
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Background¹

This case concerns a pattern of behavior undertaken by Defendant Facebook, Inc. (“Facebook”) over at least a seven-year period starting sometime around or after its decision to launch a third-party developer platform (“Facebook Platform”) and which amounts to a classic “bait and switch” tactic barred by California law. Beginning around May 24, 2007 and extending until at least April 30, 2014, Facebook engaged in a campaign of explicit promises, enticements and representations with the specific aim of inducing third-party software developers (“Developers”) like Plaintiff Six4Three, LLC (“643”) to develop applications for Facebook Platform. As part of this deliberate campaign of inducement, Facebook made repeated representations that Developers would have a level playing field, fair competition and opportunity to build businesses, even ones that compete with Facebook’s own applications.

As Facebook repeatedly promised, Facebook Platform would not preference Facebook over other developers. 643 alleges that Facebook’s campaign was part of a calculated strategy to drive Facebook’s own growth by leveraging the hard work of Developers. Indeed, at the time Facebook launched Facebook Platform, it had less than 25 million users. By 2014, once Facebook had secured over 1.3 billion users and cemented its position as a dominant global economy, Facebook decided it would prefer to no longer compete with Developers around certain types of applications, so it reversed course and broke its promise of equal access, fair competition, and the opportunity to build a business. This decision, announced on April 30, 2014 and implemented just one year later, made it impossible for certain Developers to recoup or profit from their investments, while ensuring that Facebook exclusively reaps the benefits of Developers’ investments in certain applications on Facebook Platform.

¹Because Facebook declined to include 643’s Final Proposal (attached as Exhibit 4 to the accompanying declaration) as part of a joint submission, the parties have filed their discovery proposals separately.

1 In an attempt to gain information regarding Facebook's bait and switch campaign, 643
2 served First and Second Demands for Production of Documents (the "Demands"), as well as
3 other discovery requests. The Demands were the subject of motions to compel. On December
4 13, the Court ordered 643 and Facebook to meet and confer regarding certain of the requests in
5 the Demands and, if no resolution could be achieved, to submit competing proposals for the
6 Court's consideration. The Court specifically asked the parties to work together to achieve two
7 goals related to the ongoing disputes regarding the timeframes and custodians for 643's
8 document requests: (1) permit 643 to obtain the documents necessary to find evidence in support
9 of the causes of action in its Second Amended Complaint (SAC), as the Court stressed that all of
10 643's requests are indeed relevant to the allegations in its SAC; and (2) balance 643's discovery
11 needs against the burden to Facebook in complying with these discovery requests.
12

13 Based on the Court's order, the parties conducted a telephonic meet and confer on
14 December 15 and continued their discussion in subsequent emails. 643 refined and narrowed its
15 requests based on these discussions and, on December 29, 2016, submitted an initial request-by-
16 request proposal to Facebook ("Original Proposal"). See Exhibit 1 to Declaration of James E.
17 Kruzer ("Kruzer Decl.") Reiterating its position from the December 15 meet and confer and its
18 December 22 email, Facebook, on January 10, stated that it was not willing to offer a competing
19 proposal and considered the documents it had previously produced from eight low-level
20 employees to which 643 never agreed as custodians to be sufficient. See Kruzer Decl., Exhibit 2.
21 Further, on January 9, Facebook responded to 643 with a request-by-request hit count suggesting
22 that the total number of documents under 643's requests would exceed 800,000. See Kruzer
23 Decl., Exhibit 3. As a result, and based upon 643's review of Facebook's initial production, 643
24 dramatically revised its proposal to withdraw 15 of the 26 requests entirely – over half of the
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1 total requests - and significantly limit the timeframes and custodians for the remaining 11
2 requests ("Final Proposal"). See Kruzer Decl., Exhibit 4.

3 Facebook has offered a shifting-sands explanation as to the breadth and burden 643's
4 proposals would impose. On January 17, Facebook notified 643 that its Final Proposal would
5 result in at least 800,000 documents, and that 643's Original Proposal would have likely
6 produced less than 200,000 documents. See Kruzer Decl., Exhibit 5. 643 has asked Facebook to
7 explain the reason for Facebook's changing estimates but, as of this filing, these discrepancies
8 remain inexplicable. On January 19, 643 responded that if its Original Proposal would have
9 produced less than 200,000 documents, then why did Facebook tell the Court it would result in
10 millions of documents and suggest to 643 that it would result in over 800,000 documents, which
11 led to the Court's meet and confer order in the first place? See Kruzer Decl., Exhibit 6. Further,
12 why did Facebook not tell 643 its Original Proposal would have resulted in less than 200,000
13 documents after 643 submitted the Original Proposal, as the Court requested Facebook to do?
14 The fact that Facebook withheld this information and the fact that it differs dramatically from
15 what Facebook previously stated to both the Court and 643 calls into serious question
16 Facebook's argument around the burden it bears in this production.

17
18 In Facebook's January 17 email, Facebook also attempted to argue that 643 is seeking to
19 increase the total custodians for this document production to 20. See Kruzer Decl., Exhibit 5.
20 643 notified Facebook on January 19 that this is inaccurate. For the avoidance of doubt, 643 is
21 seeking a total of seven custodians, one of which it is only seeking documents from a six month
22 period (Mr. Taylor for Request No. 66). See Kruzer Decl., Exhibit 6. 643's proposal does not
23 entail adding these custodians to the eight proposed by Facebook, but instead replacing
24 Facebook's proposed custodians with these individuals. Rather than increasing the number of
25 custodians to 20, 643's proposal reduces the number of custodians by one (from eight to seven).
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1 It was Facebook, not 643, that chose to search the files of eight low level employees, presumably
2 in an attempt to avoid producing the most relevant documents in this dispute. 643 has not asked
3 Facebook to search the requests under consideration in this meet and confer using the eight
4 custodians proposed by Facebook, and 643 cannot be faulted for Facebook's decision to do so.

5 643 further notified Facebook in that letter that it now seems that Facebook estimates the
6 total number of hits for 643's Original Proposal, which consists of eight custodians over 23
7 requests spanning 2007 to 2015, to be less than 200,000 documents; and yet, somehow, 643's
8 Final Proposal, which calls for seven custodians over 11 requests from 2010 to 2015, produces
9 over 800,000 hits. See Kruzer Decl., Exhibit 6. 643 remains incredulous that a proposal which
10 reduces the number of custodians, narrows the timeframe by over three years and reduces the
11 document requests by more than half could result in more than four times the number of
12 documents. Even accepting Facebook's argument that eliminating a few of the requests do not
13 mitigate Facebook's burden, it simply defies explanation that an overall reduction of this
14 magnitude will produce more documents.
15

16
17 The explanation of this discrepancy most favorable to Facebook is that the hit results it
18 has generated are merely estimates (as they are not exact nor subject to Boolean logic). The least
19 favorable is that Facebook has interpreted this number in ways which will prohibit 643 from
20 accessing information in possession of the custodians proposed by 643 necessary to establish the
21 elements of 643's causes of action. Under either scenario, there can be no doubt that this
22 information is highly relevant and that it cannot be obtained from the eight custodians proposed
23 by Facebook.
24

25 Based on 643's review of Facebook's initial discovery, it is abundantly clear that there is
26 no discussion among these custodians around *whether* to shut down Graph API, which is the
27 crucial issue in 643's SAC. However, there is ample discussion showing that the
28

1 decision *whether* to shut down Graph API was made by the custodians proposed by 643 in its
2 Final Proposal. 643 has taken every reasonable measure to reduce the burden imposed on
3 Facebook, and 643 is entitled to this critical information at the heart of its SAC. As such, 643
4 respectfully requests that the Court order Facebook to produce documents in accordance with
5 643's Final Proposal no later than February 15, 2017.

6 643's Final Proposal

7
8 643's review of Facebook's initial production clearly demonstrates that none of the eight
9 custodians² provided by Facebook participated in the decision-making process to shut down ■
10 ■ software businesses with the implementation of Graph API 2.0³ on April 30, 2015.⁴
11 643's review of Facebook's initial production also clearly reveals the identities of the decision-
12 makers and rough timeframes under which the decision at the heart of 643's SAC was made. As
13 such, 643 was able to narrow its requests substantially in order to mitigate the burden on
14 Facebook on the condition that 643 was able to find evidence of the decision at the heart of its
15 SAC, which concerned the decision to shut down data access to competitive applications and the
16 decision to manufacture a narrative to mask this monopolistic behavior.

17
18 Therefore, 643's Final Proposal conditionally agrees to withdraw 15 Requests (Nos. 5,
19 25, 35, 41, 47, 48, 50, 51, 52, 57, 58, 59, 62, 64, 70), which should dramatically reduce
20 Facebook's burden in document production. However, Facebook's initial production provides
21 indisputable evidence that the relevant custodians for Request Nos. 36, 39, 40, 49, 68, and 69 are
22 not in fact the individuals proposed by Facebook. It is abundantly clear from Facebook's
23

24
25 ² The eight custodians provided by Facebook include: Allison Hendrix, Policy Manager; Eddie O'Neil (Product
26 Manager); Simon Cross (Product Manager); Neha Jogani (Product Marketing); Konstantinos Papamiltiadis
(Strategic Partner Manager); Tera Randall (Technology Communications Manager); Johanna Peace (Technology
27 Communications Manager); Rob Sherman (Manager of Privacy and Public Policy).

28 ³ Note that Graph API 2.0 was often described internally as Platform 3, Platform 3.0, P3, Platform Simplification,
PS12n, or login v4.

See Kruzer Decl., Exhibit 7.

1 production that the deceptive, anti-competitive and fraudulent scheme alleged by 643 in its SAC
2 was spearheaded by Mark Zuckerberg (CEO) sometime prior to October 2012 and involved at
3 least the following additional individuals: Sam Lessin (VP Product Management), Chris Cox
4 (Chief Product Officer), Javier Olivan (VP Growth), Michael Vernal (VP Engineering), and Ilya
5 Sukhar (Head of Developer Products).

6 The decision and its rationale were then communicated to the next layer of management,
7 including Douglas Purdy (Director of Engineering), Constantin Koumouzelis (Product Manager),
8 Dan Rose (VP Partnerships and Platform Marketing), Ime Archibong (Director, Strategic
9 Partnerships), Monika Bickert (Head of Global Policy Management), Justin Osofsky (Director,
10 Platform Operations) and others, from late 2012 through the middle of 2013. Finally, as a general
11 matter, the eight individuals Facebook offered as custodians did not participate in implementing
12 the decision until mid-to-late 2013. In short, the eight custodians provided by Facebook were
13 partly responsible for implementing and addressing the repercussions of a decision, which lies at
14 the heart of 643's SAC, made by individuals who were at least two layers of management above
15 them.
16

17 Therefore, 643 proposes that Facebook produce all responsive documents related to
18 Request Nos. 36, 39, 40, 49, 68, and 69 spanning September 1, 2011 through April 30, 2015
19 using all agreed upon search terms on six custodians: Mark Zuckerberg, Sam Lessin, Chris Cox,
20 Javier Olivan, Michael Vernal, and Ilya Sukhar. Additionally, 643 believes that Facebook has
21 met its burden as relates to Request Nos. 42 and 43 with one exception: none of the automated
22 emails Facebook sent to Developers notifying them of the deprecation of Graph API were
23 included in Facebook's production. It is imperative that 643 is able to establish a timeline around
24 when Facebook provided notice to various developers, and therefore requests that Facebook
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1 supplement its production to include all automated notices to Developers spanning the period
2 April 30, 2014 to April 30, 2015.

3 Further, 643 proposes narrowing Request Nos. 56, 61 and 63 to the period January 1,
4 2007 to July 1, 2007 with Mr. Zuckerberg as the sole custodian and using search terms proposed
5 by Facebook and agreed upon by the parties that are relevant for obtaining the requested
6 information. Finally, 643 proposes narrowing Request Nos. 65 and 66 to the period January 1,
7 2010 to July 1, 2010 with Mr. Zuckerberg as custodian for Request No. 65 and Mr. Taylor as
8 custodian for Request No. 66⁵, and using search terms proposed by Facebook and agreed upon by
9 the parties that are relevant for obtaining the requested information. These proposed timeframes
10 and custodians for Request Nos. 56, 61, 63, 65 and 66 should result in a substantial reduction in
11 burden, particularly since the timeframes have been reduced to six month windows in each case,
12 a substantial reduction from the original requests.
13

14
15 **643's Review of Facebook's Production to Date Provides Ample Justification for Adopting**
16 **643's Final Proposal.**

17 In addition to reducing dramatically Facebook's burden in production going forward, 643
18 has found ample cause for proceeding with this narrowed discovery under its proposed terms.
19 Facebook's production to date provides clear evidence that Mr. Zuckerberg was directly
20 responsible for the decisions at the heart of 643's SAC and as a general matter directly oversaw
21 all strategic decisions related to data access on Facebook Platform.⁶ [REDACTED]
22 [REDACTED]
23 [REDACTED]
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1
2 Conclusion

3 These examples make clear beyond any shadow of doubt that Mr. Zuckerberg, Mr.
4 Lessin, Mr.Cox, Mr. Olivan, Mr. Vernal and Mr. Sukhar held discussions and meetings
5 beginning sometime in late 2011 until the closing of Graph API in April 30, 2015 that are highly
6 likely to lead to evidence that supports the causes of action in 643's SAC, including the decision
7 to close Graph API and the decision to manufacture an internal and public narrative to mask what
8 are clearly monopolistic motivations to shut down [REDACTED] software companies and likely
9 many more. These discussions around whether and why to close Graph API, which caused 643's
10 business to shut down, are at the heart of 643's SAC. 643 must be permitted to access this
11 information to establish the elements of its causes of action. For the foregoing reasons, we ask
12 that the Court grant 643's Final Proposal, particularly in light of the fact that 643 has withdrawn
13 15 of the 26 requests in order to address the Court's concerns around Facebook's burden of
14 production.
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2 Dated: January 20, 2017
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CRITERION LAW

4 BIRNBAUM & GODKIN, LLP
5

6 By: J E K

7 Basil P. Fthenakis, Esq.

8 David S. Godkin (admitted *pro hac vice*)

9 James E. Kruzer (admitted *pro hac vice*)

10 Attorneys for Plaintiff

11 Six4Three, LLC
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PROOF OF SERVICE

I, Cheryl A. McDuffee, declare:

I am a citizen of the United States and employed in Suffolk County, Massachusetts. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 280 Summer Street, Boston, MA 02210. On December 7, 2016, I served a copy of the within document(s):

643'S DISCOVERY PROPOSAL PURSUANT TO COURT'S DECEMBER 13, 2016 ORDER



by electronic service, per the agreement of the parties, by emailing a true and correct copy through counsel's email address to Defendant's counsel of record at the email addresses set forth below.

Sonal N. Mehta <SMehta@durietangri.com>
Laura Miller <LMiller@durietangri.com>
Durie Tangri <Service-Six4Three@durietangri.com>
217 Leidesdorff Street
San Francisco, CA 94111
P (415) 376 - 6427
Attorney for Defendant
FACEBOOK, INC.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed January 20, 2017, at Boston, Massachusetts.


Cheryl A. McDuffee

FILED
SAN MATEO COUNTY

JUN 30 2016

Clerk of the Superior Court

By *M. Marlowe*

DEPUTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN MATEO

SIX4THREE, LLC, a Delaware limited
liability company,

Plaintiff,

v.

FACEBOOK, INC., a Delaware
corporation and DOES 1-50, inclusive

Defendants.

Case No. CIV533328

**[PROPOSED] ORDER ON DEMURRER
TO PLAINTIFF'S SECOND AMENDED
COMPLAINT**

Date: June 15, 2016

Time: 9:00 a.m.

Dept.: Law and Motion

CIV533328

ORD

Order

95562



**[PROPOSED] ORDER ON DEMURRER TO PLAINTIFF'S SECOND AMENDED COMPLAINT
CASE NO. CIV533328**

1
2 Defendant Facebook, Inc.'s ("Facebook") Demurrer to Plaintiff Six4Three, LLC's Second
3 Amended Complaint came on regularly for hearing before the Court on June 15, 2016, in the Law
4 and Motion Department.

5 The Court, having reviewed the moving papers and all opposing and reply papers filed
6 with the Court, and having heard the arguments of counsel, **OVERRULES** Facebook's Demurrer
7 with respect to Plaintiff's First, Third, Fourth and Fifth Causes of Action, and **SUSTAINS**
8 Facebook's Demurrer with respect to Plaintiff's Second Cause of Action. The Court modifies its
9 June 14, 2016 tentative ruling, as follows:

10 Defendant Facebook, Inc.'s Request for Judicial Notice is **GRANTED**
11 pursuant to Evidence Code §452(h) and 453(a). However, the legal effect,
12 truthfulness and proper interpretation of the documents remain disputable. *See*
13 *Unruh-Haxton v. Regents of University of California* (2008) 162 Cal App 4th 343,
14 365. A hearing on a demurrer may not be turned into a contested evidentiary
15 hearing through the guise of having the court take judicial notice of documents
16 whose truthfulness or proper interpretation are disputable. *Fremont Indemnity Co.*
17 *v. Fremont General Corp.* (2007) 148 Cal App 4th 97, 112-118.

18 The demurrer to the 1st cause of action for Violation of B&P Code 17200
19 is **OVERRULED**. Plaintiff has sufficiently pled an unfair, unlawful or fraudulent
20 business practice. *Cel-Tech Communications, Inc. v. Los Angeles Cellular*
21 *Telephone Company* (1999) 20 Cal 4th 163, 180. Plaintiff has specifically alleged
22 that it was a victim to a Facebook practice/scheme to lure in developers, generate
23 additional advertising revenue by enhancing the user's experience and then
24 monopolize for itself the market for image search capabilities. SAC ¶¶ 54-59,
25 105-06.

26 The demurrer to the 2nd cause of action for promissory estoppel is
27 **SUSTAINED WITHOUT LEAVE TO AMEND**. The SAC fails to sufficiently
28

1 allege a clear, unambiguous promise by Facebook or the Plaintiff's reasonable
2 reliance on such a promise. The SAC is based on the allegations at ¶52 that
3 Facebook had a long-term commitment to the Facebook platform and to a level
4 playing field for developers. Plaintiff has not alleged a clear and unambiguous
5 promise to keep open the Friends' Photos Endpoint. As to reliance, Plaintiff
6 identifies only conclusory, generalized statements and alleged omissions
7 regarding Facebook's platform and API at the time they were launched in 2007
8 and 2010. SAC ¶ 10-23. This was well before Plaintiff became a registered
9 developer with Facebook in December 2012. Nothing in the statements referred to
10 the friends' photo endpoint and nothing indicated that Facebook would make
11 available all endpoints to developers forever. This does not sufficiently allege
12 reasonable reliance.

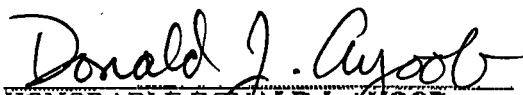
13 The demurrer to the 3rd cause of action for negligent misrepresentation is
14 OVERRULED. The SAC sufficiently alleges the elements of a claim for
15 negligent misrepresentation. These include 1) A misrepresentation of a past or
16 existing fact, 2) without reasonable grounds for believing it to be true, 3) with the
17 intent to induce another's reliance, 4) justifiable reliance on the representation and
18 5) resulting damage. *Apollo Capital Fund, LLC v. Roth Capital Partners, LLC*
19 (2007) 158 Cal App 4th 226, 243. Plaintiff has sufficiently alleged a
20 misrepresentation, intent, and justifiable reliance. Plaintiff has sufficiently
21 alleged such a representation and plaintiff's reliance on a promise is reasonable.

22 The demurrer to the 4th cause of action for Intentional Interference with
23 Contract is OVERRULED. Plaintiff has sufficiently alleged tortious interference.
24 Plaintiff has pled a valid contract; has plausibly alleged knowledge of the
25 agreements on Facebook's part and has alleged intentional acts designed to induce
26 a breach. *Quelimane Co., Inc. v. Stewart Title Guaranty Company* (1998) 19 Cal
27 4th 26, 55. See SAC at ¶¶ 86, 87, 148-49.

1 The demurrer to the 5th cause of action for Intentional Interference with
2 Prospective Business Relations is OVERRULED. The cause of action sufficiently
3 pled the required elements for such a cause of action: 1) an economic relationship
4 between the plaintiff and some third-party with the probability of future economic
5 benefit; 2) the defendant's knowledge of the relationship; 3) intentional acts by
6 defendant designed to disrupt the relationship; 4) actual disruption of the
7 relationship and 5) economic harm to the plaintiff proximately caused by
8 defendant. *Korea Supply Co. v. Lockheed Martin Corp.* (2003) 29 Cal 4th 1134,
9 1153.

10
11 IT IS SO ORDERED.

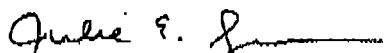
12 Dated: JUN 28 2016


HONORABLE DONALD J. AYOOB

13
14 *Approved as to form by:*

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BIRNBAUM & GODKIN, LLP

16 
17 Julie E. Schwartz


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10 Attorneys for Defendant
Facebook, Inc.

11
12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **COUNTY OF SAN MATEO**
14

15 SIX4THREE, LLC, a Delaware limited
liability company,

16 Plaintiff,

17 v.

18 FACEBOOK, INC., a Delaware
19 corporation and DOES 1-50, inclusive,

20 Defendant.
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Case No. CIV533328

**DEFENDANT FACEBOOK, INC.'S
SECOND SUPPLEMENTAL OBJECTIONS
AND RESPONSES TO PLAINTIFF
SIX4THREE, LLC'S FIRST SET OF
DEMANDS FOR INSPECTION OF
DOCUMENTS**

1 **PROPOUNDING PARTY:** **PLAINTIFF SIX4THREE, LLC**
2 **RESPONDING PARTY:** **DEFENDANT FACEBOOK, INC.**
3 **SET:** **ONE**

4 Defendant Facebook, Inc. ("Facebook") hereby objects and responds as follows to the
5 First Set of Demands for Inspection of Documents ("Requests for Production") propounded by
6 Plaintiff Six4Three, LLC ("Plaintiff").

7 **GENERAL OBJECTIONS AND LIMITATIONS**

8 Each and every Request for Production ("Request") is subject to the General Objections
9 and Limitations set forth herein ("General Objections"), in addition to the specific objections and
10 limitations set forth in the respective responses. The General Objections and limitations form part
11 of the response to each Request for Production and are set forth to avoid duplication for each
12 response. Facebook makes the following General Objections to each Request for Production:

13 1. Facebook objects to the Requests for Production to the extent they seek the content
14 of communications of Facebook users on the grounds that the federal Stored Communications
15 Act, 18 U.S.C. §§ 2701, *et seq.*, ("SCA") prohibits service providers such as Facebook from
16 disclosing the contents of electronic communications in electronic storage or that are carried or
17 maintained on a remote computing service.

18 2. Facebook objects to the Requests for Production to the extent they seek records
19 and information subject to the SCA, pertaining to users of Facebook's services, who should be
20 provided with notice and an opportunity to object prior to the disclosure of any reasonably
21 available basic subscriber information.

22 3. Facebook objects to the Requests for Production to the extent that they seek
23 documents that Facebook is legally or contractually prohibited from disclosing, including
24 documents that would require Facebook to breach a confidentiality contract, protective order,
25 settlement, or other duty to a third party to maintain confidentiality.

26 4. Facebook objects to the Requests for Production to the extent they are unduly
27 burdensome and oppressive in the context of this action.

1 5. Facebook objects to the Requests for Production to the extent they call for the
2 production of documents protected by the attorney-client privilege, the settlement privilege, the
3 work-product doctrine, or any other applicable privilege. Such documents will not be provided in
4 response to the Requests for Production, and any inadvertent production thereof shall not be
5 deemed a waiver of any privilege with respect to such documents, or of any work-product
6 doctrine protections attaching to such documents.

7 6. Facebook objects to the Requests for Production to the extent they require the
8 disclosure of documents containing proprietary or confidential information, trade secrets, or
9 information that may implicate third-party privacy rights. Facebook will not produce any such
10 documents in the absence of the entry of a suitable protective order.

11 7. Facebook objects to the Requests for Production to the extent they are vague,
12 ambiguous, unintelligible, overly broad, or harassing.

13 8. Facebook objects to the Requests for Production to the extent they seek documents
14 that are not relevant to the subject matter of this action, nor reasonably calculated to lead to the
15 discovery of admissible evidence.

16 9. Facebook objects to the Requests for Production to the extent they seek documents
17 and things not within the possession, custody, or control of Facebook. An objection on this
18 ground does not constitute a representation or admission that such documents do in fact exist.

19 10. Facebook objects to the Requests for Production to the extent they seek documents
20 already in Plaintiff's possession, custody, or control, or that can be obtained by Plaintiff with
21 equal burden or expense, or directly from Facebook user(s).

22 11. Facebook objects to the Requests for Production, the instructions, and the
23 definitions to the extent they seek to impose obligations upon it beyond those required or
24 permitted by the California Code of Civil Procedure.

25 12. Facebook objects to the definitions of "DOCUMENTS" and
26 "COMMUNICATIONS" to the extent they impose any obligations with respect to the production
27 of electronically stored information that are different from or in addition to those imposed by the
28 California Code of Civil Procedure. Facebook further objects to these definitions to the extent

1 that they include electronically stored information that is (1) not reasonably accessible by
2 Facebook because of undue burden or expense; (2) obtainable from another source that is less
3 burdensome, expensive or more convenient; and/or (3) unreasonably cumulative or duplicative, or
4 where the likely burden or expense of producing the electronically stored information outweighs
5 the likely benefit.

6 13. Facebook objects to the definitions of “FACEBOOK,” “DEFENDANT,” “YOU,”
7 and “YOUR” on the grounds that they are overbroad and call for information covered by the
8 attorney-client and work product privileges.

9 14. All of the following responses are based solely upon such information that is
10 presently available and specifically known to Facebook. Thus, Facebook’s responses are made
11 without prejudice to Facebook’s right subsequently to add, modify, or otherwise change or amend
12 these responses. Accordingly, Facebook reserves the right to change any of its objections and/or
13 responses to the Requests for Production as new information is discovered. Furthermore,
14 Facebook specifically reserves the right to:

- 15 a. introduce other information, documents, and things in this action that it may
16 discover or upon which it may come to rely;
- 17 b. use documents or things that it may later determine to have been responsive to the
18 Requests; and
- 19 c. revise, correct, supplement, or clarify any of its written responses at any time.

20 The foregoing General Objections are hereby incorporated into each and every
21 objection/response below. Subject to, preserving, and without waiving, the General Objections,
22 Facebook responds as follows:

23 **DOCUMENT REQUEST NO. 1:**

24 All DOCUMENTS AND COMMUNICATIONS CONCERNING 643.

25 **RESPONSE TO DOCUMENT REQUEST NO. 1:**

26 Facebook incorporates each of the General Objections as if they were stated in full and
27 further objects to this Request to the extent that it: (1) is vague and ambiguous; (2) is overly
28 broad and unduly burdensome in seeking “all DOCUMENTS AND COMMUNICATIONS”; (3)

1 calls for information covered by the attorney-client and work product privileges; (4) calls for
2 confidential information in the absence of the entry of a suitable protective order; (5) seeks
3 documents that are not relevant to the subject matter of this litigation and not reasonably
4 calculated to lead to the discovery of admissible evidence; (6) seeks information equally available
5 to Plaintiff; (7) is premature as Facebook's Demurrer to Plaintiff's Complaint is not due until
6 September 8, 2015; and (8) seeks the content of electronic communications that Facebook is
7 prohibited from producing under the SCA.

8 **SUPPLEMENTAL RESPONSE TO DOCUMENT REQUEST NO. 1:**

9 Facebook incorporates each of the General Objections as if they were stated in full and
10 further objects to this Request to the extent that it: (1) is vague and ambiguous; (2) is overly
11 broad and unduly burdensome in seeking "all DOCUMENTS AND COMMUNICATIONS
12 CONCERNING 643"; (3) calls for information covered by the attorney-client and work product
13 privileges; (4) calls for confidential information in the absence of the entry of a suitable protective
14 order; (5) seeks documents that are not relevant to the subject matter of this litigation and not
15 reasonably calculated to lead to the discovery of admissible evidence; (6) seeks information
16 equally available to Plaintiff; and (7) seeks the content of electronic communications that
17 Facebook is prohibited from producing under the SCA.

18 Subject to and without waiving the foregoing objections, Facebook will produce
19 responsive, non-privileged documents that it locates, if any, after a reasonable search.

20 **DOCUMENT REQUEST NO. 2:**

21 All DOCUMENTS AND COMMUNICATIONS CONCERNING FACEBOOK's
22 approval of 643 as a DEVELOPER.

23 **RESPONSE TO DOCUMENT REQUEST NO. 2:**

24 Facebook incorporates each of the General Objections as if they were stated in full and
25 further objects to this Request to the extent that it: (1) is duplicative and cumulative of prior
26 requests; (2) is vague and ambiguous; (3) is overly broad and unduly burdensome in seeking "all
27 DOCUMENTS AND COMMUNICATIONS"; (4) calls for information covered by the attorney-
28 client and work product privileges; (5) calls for confidential information in the absence of the

1 entry of a suitable protective order; (6) seeks documents that are not relevant to the subject matter
2 of this litigation and not reasonably calculated to lead to the discovery of admissible evidence; (7)
3 seeks information equally available to Plaintiff; (8) is premature as Facebook's Demurrer to
4 Plaintiff's Complaint is not due until September 8, 2015; and (9) seeks the content of electronic
5 communications that Facebook is prohibited from producing under the SCA.

6 **SUPPLEMENTAL RESPONSE TO DOCUMENT REQUEST NO. 2:**

7 Facebook incorporates each of the General Objections as if they were stated in full and
8 further objects to this Request to the extent that it: (1) is duplicative and cumulative of prior
9 requests; (2) is vague and ambiguous; (3) is overly broad and unduly burdensome in seeking "all
10 DOCUMENTS AND COMMUNICATIONS CONCERNING FACEBOOK's approval..."; (4)
11 calls for information covered by the attorney-client and work product privileges; (5) calls for
12 confidential information in the absence of the entry of a suitable protective order; (6) seeks
13 documents that are not relevant to the subject matter of this litigation and not reasonably
14 calculated to lead to the discovery of admissible evidence; (7) seeks information equally available
15 to Plaintiff; and (8) seeks the content of electronic communications that Facebook is prohibited
16 from producing under the SCA.

17 Subject to and without waiving the foregoing objections, Facebook will produce
18 responsive, non-privileged documents that it locates, if any, after a reasonable search.

19 **DOCUMENT REQUEST NO. 3:**

20 All DOCUMENTS AND COMMUNICATIONS CONCERNING the APP.

21 **RESPONSE TO DOCUMENT REQUEST NO. 3:**

22 Facebook incorporates each of the General Objections as if they were stated in full and
23 further objects to this Request to the extent that it: (1) is vague and ambiguous; (2) is overly
24 broad and unduly burdensome in seeking "all DOCUMENTS AND COMMUNICATIONS"; (3)
25 calls for information covered by the attorney-client and work product privileges; (4) calls for
26 confidential information in the absence of the entry of a suitable protective order; (5) seeks
27 documents that are not relevant to the subject matter of this litigation and not reasonably
28 calculated to lead to the discovery of admissible evidence; (6) seeks information equally available

1 to Plaintiff; (7) is premature as Facebook's Demurrer to Plaintiff's Complaint is not due until
2 September 8, 2015; and (8) seeks the content of electronic communications that Facebook is
3 prohibited from producing under the SCA.

4 **SUPPLEMENTAL RESPONSE TO DOCUMENT REQUEST NO. 3:**

5 Facebook incorporates each of the General Objections as if they were stated in full and
6 further objects to this Request to the extent that it: (1) is vague and ambiguous; (2) is overly
7 broad and unduly burdensome in seeking "all DOCUMENTS AND COMMUNICATIONS
8 CONCERNING the APP"; (3) calls for information covered by the attorney-client and work
9 product privileges; (4) calls for confidential information in the absence of the entry of a suitable
10 protective order; (5) seeks documents that are not relevant to the subject matter of this litigation
11 and not reasonably calculated to lead to the discovery of admissible evidence; (6) seeks
12 information equally available to Plaintiff; and (7) seeks the content of electronic communications
13 that Facebook is prohibited from producing under the SCA.

14 Subject to and without waiving the foregoing objections, Facebook will produce
15 responsive, non-privileged documents that it locates, if any, after a reasonable search.

16 **DOCUMENT REQUEST NO. 4:**

17 All DOCUMENTS AND COMMUNICATIONS CONCERNING FACEBOOK's
18 approval of the APP.

19 **RESPONSE TO DOCUMENT REQUEST NO. 4:**

20 Facebook incorporates each of the General Objections as if they were stated in full and
21 further objects to this Request to the extent that it: (1) is duplicative and cumulative of prior
22 requests; (2) is vague and ambiguous; (3) is vague and ambiguous as to the term "approval"; (4)
23 is overly broad and unduly burdensome in seeking "all DOCUMENTS AND
24 COMMUNICATIONS"; (5) calls for information covered by the attorney-client and work
25 product privileges; (6) calls for confidential information in the absence of the entry of a suitable
26 protective order; (7) seeks documents that are not relevant to the subject matter of this litigation
27 and not reasonably calculated to lead to the discovery of admissible evidence; (8) seeks
28 information equally available to Plaintiff; (9) is premature as Facebook's Demurrer to Plaintiff's

1 Complaint is not due until September 8, 2015; and (10) seeks the content of electronic
2 communications that Facebook is prohibited from producing under the SCA.

3 **SUPPLEMENTAL RESPONSE TO DOCUMENT REQUEST NO. 4:**

4 Facebook incorporates each of the General Objections as if they were stated in full and
5 further objects to this Request to the extent that it: (1) is duplicative and cumulative of prior
6 requests; (2) is vague and ambiguous; (3) is vague and ambiguous as to the term “approval”; (4)
7 is overly broad and unduly burdensome in seeking “all DOCUMENTS AND
8 COMMUNICATIONS CONCERNING FACEBOOK’S approval...”; (5) calls for information
9 covered by the attorney-client and work product privileges; (6) calls for confidential information
10 in the absence of the entry of a suitable protective order; (7) seeks documents that are not relevant
11 to the subject matter of this litigation and not reasonably calculated to lead to the discovery of
12 admissible evidence; (8) seeks information equally available to Plaintiff; and (9) seeks the content
13 of electronic communications that Facebook is prohibited from producing under the SCA.

14 Subject to and without waiving the foregoing objections, Facebook will produce
15 responsive, non-privileged documents that it locates, if any, after a reasonable search.

16 **DOCUMENT REQUEST NO. 5:**

17 All DOCUMENTS AND COMMUNICATIONS CONCERNING FACEBOOK’S
18 decision to open FACEBOOK PLATFORM to DEVELOPERS.

19 **RESPONSE TO DOCUMENT REQUEST NO. 5:**

20 Facebook incorporates each of the General Objections as if they were stated in full and
21 further objects to this Request to the extent that it: (1) is vague and ambiguous; (2) is overly
22 broad and unduly burdensome in seeking “all DOCUMENTS AND COMMUNICATIONS”; (3)
23 calls for information covered by the attorney-client and work product privileges; (4) calls for
24 confidential information in the absence of the entry of a suitable protective order; (5) seeks
25 documents that are not relevant to the subject matter of this litigation and not reasonably
26 calculated to lead to the discovery of admissible evidence; (6) seeks information equally available
27 to Plaintiff; (7) is premature as Facebook’s Demurrer to Plaintiff’s Complaint is not due until
28

1 September 8, 2015; and (8) seeks the content of electronic communications that Facebook is
2 prohibited from producing under the SCA.

3 **SUPPLEMENTAL RESPONSE TO DOCUMENT REQUEST NO. 5:**

4 Facebook incorporates each of the General Objections as if they were stated in full and
5 further objects to this Request to the extent that it: (1) is vague and ambiguous; (2) is overly
6 broad and unduly burdensome in seeking “all DOCUMENTS AND COMMUNICATIONS
7 CONCERNING FACEBOOK’s decision...”; (3) calls for information covered by the attorney-
8 client and work product privileges; (4) calls for confidential information in the absence of the
9 entry of a suitable protective order; (5) seeks documents that are not relevant to the subject matter
10 of this litigation and not reasonably calculated to lead to the discovery of admissible evidence; (6)
11 seeks information equally available to Plaintiff; and (7) seeks the content of electronic
12 communications that Facebook is prohibited from producing under the SCA.

13 **DOCUMENT REQUEST NO. 6:**

14 All DOCUMENTS AND COMMUNICATIONS CONCERNING FACEBOOK’s
15 announcement CONCERNING opening FACEBOOK PLATFORM to DEVELOPERS,
16 INCLUDING any such announcement on or about June 1, 2007.

17 **RESPONSE TO DOCUMENT REQUEST NO. 6:**

18 Facebook incorporates each of the General Objections as if they were stated in full and
19 further objects to this Request to the extent that it: (1) is duplicative and cumulative of prior
20 requests; (2) is vague and ambiguous; (3) is overly broad and unduly burdensome in seeking “all
21 DOCUMENTS AND COMMUNICATIONS”; (4) calls for information covered by the attorney-
22 client and work product privileges; (5) calls for confidential information in the absence of the
23 entry of a suitable protective order; (6) seeks documents that are not relevant to the subject matter
24 of this litigation and not reasonably calculated to lead to the discovery of admissible evidence; (7)
25 seeks information equally available to Plaintiff; (8) is premature as Facebook’s Demurrer to
26 Plaintiff’s Complaint is not due until September 8, 2015; and (9) seeks the content of electronic
27 communications that Facebook is prohibited from producing under the SCA.
28

1 **SUPPLEMENTAL RESPONSE TO DOCUMENT REQUEST NO. 6:**

2 Facebook incorporates each of the General Objections as if they were stated in full and
3 further objects to this Request to the extent that it: (1) is duplicative and cumulative of prior
4 requests; (2) is vague and ambiguous; (3) is overly broad and unduly burdensome in seeking “all
5 DOCUMENTS AND COMMUNICATIONS CONCERNING FACEBOOK’s announcement
6 CONCERNING opening FACEBOOK PLATFORM...”; (4) calls for information covered by the
7 attorney-client and work product privileges; (5) calls for confidential information in the absence
8 of the entry of a suitable protective order; (6) seeks documents that are not relevant to the subject
9 matter of this litigation and not reasonably calculated to lead to the discovery of admissible
10 evidence; (7) seeks information equally available to Plaintiff; and (8) seeks the content of
11 electronic communications that Facebook is prohibited from producing under the SCA.

12 Subject to and without waiving the foregoing objections, Facebook will produce
13 responsive, non-privileged documents that it locates, if any, after a reasonable search that are
14 sufficient to show the contents of Facebook’s announcement, on or about June 1, 2007, regarding
15 opening the Facebook Platform to Developers.

16 **SECOND SUPPLEMENTAL RESPONSE TO DOCUMENT REQUEST NO. 6:**

17 Facebook incorporates each of the General Objections as if they were stated in full and
18 further objects to this Request to the extent that it: (1) is duplicative and cumulative of prior
19 requests; (2) is vague and ambiguous; (3) is overly broad and unduly burdensome in seeking “all
20 DOCUMENTS AND COMMUNICATIONS CONCERNING FACEBOOK’s announcement
21 CONCERNING opening FACEBOOK PLATFORM...”; (4) calls for information covered by the
22 attorney-client and work product privileges; (5) calls for confidential information in the absence
23 of the entry of a suitable protective order; (6) seeks documents that are not relevant to the subject
24 matter of this litigation and not reasonably calculated to lead to the discovery of admissible
25 evidence; (7) seeks information equally available to Plaintiff; and (8) seeks the content of
26 electronic communications that Facebook is prohibited from producing under the SCA.

27 Subject to and without waiving the foregoing objections, Facebook will produce
28 responsive, non-privileged documents that it locates, if any, after a reasonable search.

1 **DOCUMENT REQUEST NO. 7:**

2 All DOCUMENTS AND COMMUNICATIONS CONCERNING Katie Mitic's post on
3 FACEBOOK's website dated June 1, 2007, CONCERNING opening FACEBOOK PLATFORM
4 to DEVELOPERS, INCLUDING her statement that "any developer can build the same
5 applications we can."

6 **RESPONSE TO DOCUMENT REQUEST NO. 7:**

7 Facebook incorporates each of the General Objections as if they were stated in full and
8 further objects to this Request to the extent that it: (1) is vague and ambiguous; (2) is overly
9 broad and unduly burdensome in seeking "all DOCUMENTS AND COMMUNICATIONS"; (3)
10 calls for information covered by the attorney-client and work product privileges; (4) calls for
11 confidential information in the absence of the entry of a suitable protective order; (5) seeks
12 documents that are not relevant to the subject matter of this litigation and not reasonably
13 calculated to lead to the discovery of admissible evidence; (6) seeks information equally available
14 to Plaintiff; (7) is premature as Facebook's Demurrer to Plaintiff's Complaint is not due until
15 September 8, 2015; and (8) seeks the content of electronic communications that Facebook is
16 prohibited from producing under the SCA.

17 **SUPPLEMENTAL RESPONSE TO DOCUMENT REQUEST NO. 7:**

18 Facebook incorporates each of the General Objections as if they were stated in full and
19 further objects to this Request to the extent that it: (1) is vague and ambiguous; (2) is overly
20 broad and unduly burdensome in seeking "all DOCUMENTS AND COMMUNICATIONS
21 CONCERNING Katie Mitic's post..."; (3) calls for information covered by the attorney-client
22 and work product privileges; (4) calls for confidential information in the absence of the entry of a
23 suitable protective order; (5) seeks documents that are not relevant to the subject matter of this
24 litigation and not reasonably calculated to lead to the discovery of admissible evidence; (6) seeks
25 information equally available to Plaintiff; and (7) seeks the content of electronic communications
26 that Facebook is prohibited from producing under the SCA.

27 Subject to and without waiving the foregoing objections, Facebook will produce
28 responsive, non-privileged documents that it locates, if any, after a reasonable search that are

1 sufficient to show the contents of Katie Mitic's post on FACEBOOK's website dated June 1,
2 2007.

3 **SECOND SUPPLEMENTAL RESPONSE TO DOCUMENT REQUEST NO. 7:**

4 Facebook incorporates each of the General Objections as if they were stated in full and
5 further objects to this Request to the extent that it: (1) is vague and ambiguous; (2) is overly
6 broad and unduly burdensome in seeking "all DOCUMENTS AND COMMUNICATIONS
7 CONCERNING Katie Mitic's post..."; (3) calls for information covered by the attorney-client
8 and work product privileges; (4) calls for confidential information in the absence of the entry of a
9 suitable protective order; (5) seeks documents that are not relevant to the subject matter of this
10 litigation and not reasonably calculated to lead to the discovery of admissible evidence; (6) seeks
11 information equally available to Plaintiff; and (7) seeks the content of electronic communications
12 that Facebook is prohibited from producing under the SCA.

13 Subject to and without waiving the foregoing objections, Facebook will produce
14 responsive, non-privileged documents that it locates, if any, after a reasonable search.

15 **DOCUMENT REQUEST NO. 8:**

16 All DOCUMENTS AND COMMUNICATIONS CONCERNING any reservation of
17 rights on the part of FACEBOOK to close or modify DEVELOPER access to FACEBOOK
18 PLATFORM, in whole or in part.

19 **RESPONSE TO DOCUMENT REQUEST NO. 8:**

20 Facebook incorporates each of the General Objections as if they were stated in full and
21 further objects to this Request to the extent that it: (1) is vague and ambiguous; (2) is vague and
22 ambiguous as to the terms "reservation of rights," "close," and "access"; (3) is overly broad and
23 unduly burdensome in seeking "all DOCUMENTS AND COMMUNICATIONS"; (4) calls for
24 information covered by the attorney-client and work product privileges; (5) calls for confidential
25 information in the absence of the entry of a suitable protective order; (6) seeks documents that are
26 not relevant to the subject matter of this litigation and not reasonably calculated to lead to the
27 discovery of admissible evidence; (7) seeks information equally available to Plaintiff; (8) is
28 premature as Facebook's Demurrer to Plaintiff's Complaint is not due until September 8, 2015;

1 and (9) seeks the content of electronic communications that Facebook is prohibited from
2 producing under the SCA.

3 **SUPPLEMENTAL RESPONSE TO DOCUMENT REQUEST NO. 8:**

4 Facebook incorporates each of the General Objections as if they were stated in full and
5 further objects to this Request to the extent that it: (1) is vague and ambiguous; (2) is vague and
6 ambiguous as to the terms “reservation of rights,” “close,” and “access”; (3) is overly broad and
7 unduly burdensome in seeking “all DOCUMENTS AND COMMUNICATIONS CONCERNING
8 any reservation of rights...”; (4) calls for information covered by the attorney-client and work
9 product privileges; (5) calls for confidential information in the absence of the entry of a suitable
10 protective order; (6) seeks documents that are not relevant to the subject matter of this litigation
11 and not reasonably calculated to lead to the discovery of admissible evidence; (7) seeks
12 information equally available to Plaintiff; and (8) seeks the content of electronic communications
13 that Facebook is prohibited from producing under the SCA.

14 Subject to and without waiving the foregoing objections, Facebook will produce
15 responsive, non-privileged documents that it locates, if any, after a reasonable search that are
16 sufficient to show Facebook’s reservation of rights to close or modify Developer access to
17 Facebook Platform, in whole or in part.

18 **DOCUMENT REQUEST NO. 9:**

19 All DOCUMENTS AND COMMUNICATIONS CONCERNING the meaning of the
20 term “breaking change” as that term is used in FACEBOOK’s Ninety-Day Breaking Change
21 Policy.

22 **RESPONSE TO DOCUMENT REQUEST NO. 9:**

23 Facebook incorporates each of the General Objections as if they were stated in full and
24 further objects to this Request to the extent that it: (1) is vague and ambiguous; (2) is overly
25 broad and unduly burdensome in seeking “all DOCUMENTS AND COMMUNICATIONS”; (3)
26 calls for information covered by the attorney-client and work product privileges; (4) calls for
27 confidential information in the absence of the entry of a suitable protective order; (5) seeks
28 documents that are not relevant to the subject matter of this litigation and not reasonably

1 calculated to lead to the discovery of admissible evidence; (6) seeks information equally available
2 to Plaintiff; (7) is premature as Facebook's Demurrer to Plaintiff's Complaint is not due until
3 September 8, 2015; and (8) seeks the content of electronic communications that Facebook is
4 prohibited from producing under the SCA.

5 **SUPPLEMENTAL RESPONSE TO DOCUMENT REQUEST NO. 9:**

6 Facebook incorporates each of the General Objections as if they were stated in full and
7 further objects to this Request to the extent that it: (1) is vague and ambiguous; (2) is overly
8 broad and unduly burdensome in seeking "all DOCUMENTS AND COMMUNICATIONS
9 CONCERNING the meaning of the term 'breaking change'..."; (3) calls for information covered
10 by the attorney-client and work product privileges; (4) calls for confidential information in the
11 absence of the entry of a suitable protective order; (5) seeks documents that are not relevant to the
12 subject matter of this litigation and not reasonably calculated to lead to the discovery of
13 admissible evidence; (6) seeks information equally available to Plaintiff; and (7) seeks the content
14 of electronic communications that Facebook is prohibited from producing under the SCA.

15 Subject to and without waiving the foregoing objections, Facebook will produce
16 responsive, non-privileged documents that it locates, if any, after a reasonable search that are
17 sufficient to show the meaning of the term "breaking change" as that term is used in Facebook's
18 Ninety-Day Breaking Change Policy.

19 **SECOND SUPPLEMENTAL RESPONSE TO DOCUMENT REQUEST NO. 9:**

20 Facebook incorporates each of the General Objections as if they were stated in full and
21 further objects to this Request to the extent that it: (1) is vague and ambiguous; (2) is overly
22 broad and unduly burdensome in seeking "all DOCUMENTS AND COMMUNICATIONS
23 CONCERNING the meaning of the term 'breaking change'..."; (3) calls for information covered
24 by the attorney-client and work product privileges; (4) calls for confidential information in the
25 absence of the entry of a suitable protective order; (5) seeks documents that are not relevant to the
26 subject matter of this litigation and not reasonably calculated to lead to the discovery of
27 admissible evidence; (6) seeks information equally available to Plaintiff; and (7) seeks the content
28 of electronic communications that Facebook is prohibited from producing under the SCA.

1 Subject to and without waiving the foregoing objections, Facebook will produce
2 responsive, non-privileged documents that it locates, if any, after a reasonable search.

3 **DOCUMENT REQUEST NO. 10:**

4 All DOCUMENTS AND COMMUNICATIONS CONCERNING FACEBOOK'S
5 decision to open Graph API to DEVELOPERS.

6 **RESPONSE TO DOCUMENT REQUEST NO. 10:**

7 Facebook incorporates each of the General Objections as if they were stated in full and
8 further objects to this Request to the extent that it: (1) is vague and ambiguous; (2) is overly
9 broad and unduly burdensome in seeking "all DOCUMENTS AND COMMUNICATIONS"; (3)
10 calls for information covered by the attorney-client and work product privileges; (4) calls for
11 confidential information in the absence of the entry of a suitable protective order; (5) seeks
12 documents that are not relevant to the subject matter of this litigation and not reasonably
13 calculated to lead to the discovery of admissible evidence; (6) seeks information equally available
14 to Plaintiff; (7) is premature as Facebook's Demurrer to Plaintiff's Complaint is not due until
15 September 8, 2015; and (8) seeks the content of electronic communications that Facebook is
16 prohibited from producing under the SCA.

17 **SUPPLEMENTAL RESPONSE TO DOCUMENT REQUEST NO. 10:**

18 Facebook incorporates each of the General Objections as if they were stated in full and
19 further objects to this Request to the extent that it: (1) is vague and ambiguous; (2) is overly
20 broad and unduly burdensome in seeking "all DOCUMENTS AND COMMUNICATIONS
21 CONCERNING FACEBOOK'S decision..."; (3) calls for information covered by the attorney-
22 client and work product privileges; (4) calls for confidential information in the absence of the
23 entry of a suitable protective order; (5) seeks documents that are not relevant to the subject matter
24 of this litigation and not reasonably calculated to lead to the discovery of admissible evidence; (6)
25 seeks information equally available to Plaintiff; and (7) seeks the content of electronic
26 communications that Facebook is prohibited from producing under the SCA.

1 **DOCUMENT REQUEST NO. 11:**

2 All DOCUMENTS AND COMMUNICATIONS CONCERNING FACEBOOK’S
3 announcement of its decision to open Graph API to DEVELOPERS, INCLUDING any such
4 announcement by Bret Taylor at the F8 Developers Conference in 2010.

5 **RESPONSE TO DOCUMENT REQUEST NO. 11:**

6 Facebook incorporates each of the General Objections as if they were stated in full and
7 further objects to this Request to the extent that it: (1) is duplicative and cumulative of prior
8 requests; (2) is vague and ambiguous; (3) is overly broad and unduly burdensome in seeking “all
9 DOCUMENTS AND COMMUNICATIONS”; (4) calls for information covered by the attorney-
10 client and work product privileges; (5) calls for confidential information in the absence of the
11 entry of a suitable protective order; (6) seeks documents that are not relevant to the subject matter
12 of this litigation and not reasonably calculated to lead to the discovery of admissible evidence; (7)
13 seeks information equally available to Plaintiff; (8) is premature as Facebook’s Demurrer to
14 Plaintiff’s Complaint is not due until September 8, 2015; and (9) seeks the content of electronic
15 communications that Facebook is prohibited from producing under the SCA.

16 **SUPPLEMENTAL RESPONSE TO DOCUMENT REQUEST NO. 11:**

17 Facebook incorporates each of the General Objections as if they were stated in full and
18 further objects to this Request to the extent that it: (1) is duplicative and cumulative of prior
19 requests; (2) is vague and ambiguous; (3) is overly broad and unduly burdensome in seeking “all
20 DOCUMENTS AND COMMUNICATIONS CONCERNING FACEBOOK’S announcement of
21 its decision...”; (4) calls for information covered by the attorney-client and work product
22 privileges; (5) calls for confidential information in the absence of the entry of a suitable protective
23 order; (6) seeks documents that are not relevant to the subject matter of this litigation and not
24 reasonably calculated to lead to the discovery of admissible evidence; (7) seeks information
25 equally available to Plaintiff; and (8) seeks the content of electronic communications that
26 Facebook is prohibited from producing under the SCA.

27 Subject to and without waiving the foregoing objections, Facebook will produce
28 responsive, non-privilege documents that it locates, if any, after a reasonable search that are

1 sufficient to show the contents of the public announcement of Facebook’s decision to open Graph
2 API to developers, including any such announcement by Bret Taylor at the F8 Developers
3 Conference in 2010.

4 **SECOND SUPPLEMENTAL RESPONSE TO DOCUMENT REQUEST NO. 11:**

5 Facebook incorporates each of the General Objections as if they were stated in full and
6 further objects to this Request to the extent that it: (1) is duplicative and cumulative of prior
7 requests; (2) is vague and ambiguous; (3) is overly broad and unduly burdensome in seeking “all
8 DOCUMENTS AND COMMUNICATIONS CONCERNING FACEBOOK’S announcement of
9 its decision...”; (4) calls for information covered by the attorney-client and work product
10 privileges; (5) calls for confidential information in the absence of the entry of a suitable protective
11 order; (6) seeks documents that are not relevant to the subject matter of this litigation and not
12 reasonably calculated to lead to the discovery of admissible evidence; (7) seeks information
13 equally available to Plaintiff; and (8) seeks the content of electronic communications that
14 Facebook is prohibited from producing under the SCA.

15 Subject to and without waiving the foregoing objections, Facebook will produce
16 responsive, non-privileged documents that it locates, if any, after a reasonable search.

17 **DOCUMENT REQUEST NO. 12:**

18 All DOCUMENTS AND COMMUNICATIONS CONCERNING any reservation of
19 rights on the part of FACEBOOK to close or modify DEVELOPER access to Graph API, in
20 whole or in part.

21 **RESPONSE TO DOCUMENT REQUEST NO. 12:**

22 Facebook incorporates each of the General Objections as if they were stated in full and
23 further objects to this Request to the extent that it: (1) is duplicative and cumulative of prior
24 Requests; (2) is vague and ambiguous; (3) is vague and ambiguous as to the terms “reservation of
25 rights,” “close,” and “access”; (4) is overly broad and unduly burdensome in seeking “all
26 DOCUMENTS AND COMMUNICATIONS”; (5) calls for information covered by the attorney-
27 client and work product privileges; (6) calls for confidential information in the absence of the
28 entry of a suitable protective order; (7) seeks documents that are not relevant to the subject matter

1 of this litigation and not reasonably calculated to lead to the discovery of admissible evidence; (8)
2 seeks information equally available to Plaintiff; (9) is premature as Facebook's Demurrer to
3 Plaintiff's Complaint is not due until September 8, 2015; and (10) seeks the content of electronic
4 communications that Facebook is prohibited from producing under the SCA.

5 **SUPPLEMENTAL RESPONSE TO DOCUMENT REQUEST NO. 12:**

6 Facebook incorporates each of the General Objections as if they were stated in full and
7 further objects to this Request to the extent that it: (1) is duplicative and cumulative of prior
8 Requests; (2) is vague and ambiguous; (3) is vague and ambiguous as to the terms "reservation of
9 rights," "close," and "access"; (4) is overly broad and unduly burdensome in seeking "all
10 DOCUMENTS AND COMMUNICATIONS CONCERNING any reservation of rights..."; (5)
11 calls for information covered by the attorney-client and work product privileges; (6) calls for
12 confidential information in the absence of the entry of a suitable protective order; (7) seeks
13 documents that are not relevant to the subject matter of this litigation and not reasonably
14 calculated to lead to the discovery of admissible evidence; (8) seeks information equally available
15 to Plaintiff; and (9) seeks the content of electronic communications that Facebook is prohibited
16 from producing under the SCA.

17 Subject to and without waiving the foregoing objections, Facebook will produce
18 responsive, non-privileged documents that it locates, if any, after a reasonable search sufficient to
19 show Facebook's reservation of rights to close or modify Developer access to Graph API, in
20 whole or in part.

21 **DOCUMENT REQUEST NO. 13:**

22 All DOCUMENTS AND COMMUNICATIONS CONCERNING FACEBOOK's
23 decision to permit DEVELOPERS to access the USER's FRIENDS Photos ENDPOINT.

24 **RESPONSE TO DOCUMENT REQUEST NO. 13:**

25 Facebook incorporates each of the General Objections as if they were stated in full and
26 further objects to this Request to the extent that it: (1) is vague and ambiguous; (2) is overly
27 broad and unduly burdensome in seeking "all DOCUMENTS AND COMMUNICATIONS"; (3)
28 calls for information covered by the attorney-client and work product privileges; (4) calls for

1 confidential information in the absence of the entry of a suitable protective order; (5) seeks
2 documents that are not relevant to the subject matter of this litigation and not reasonably
3 calculated to lead to the discovery of admissible evidence; (6) seeks information equally available
4 to Plaintiff; (7) is premature as Facebook's Demurrer to Plaintiff's Complaint is not due until
5 September 8, 2015; and (8) seeks the content of electronic communications that Facebook is
6 prohibited from producing under the SCA.

7 **SUPPLEMENTAL RESPONSE TO DOCUMENT REQUEST NO. 13:**

8 Facebook incorporates each of the General Objections as if they were stated in full and
9 further objects to this Request to the extent that it: (1) is vague and ambiguous; (2) is overly
10 broad and unduly burdensome in seeking "all DOCUMENTS AND COMMUNICATIONS
11 CONCERNING FACEBOOK's decision..."; (3) calls for information covered by the attorney-
12 client and work product privileges; (4) calls for confidential information in the absence of the
13 entry of a suitable protective order; (5) seeks documents that are not relevant to the subject matter
14 of this litigation and not reasonably calculated to lead to the discovery of admissible evidence; (6)
15 seeks information equally available to Plaintiff; and (7) seeks the content of electronic
16 communications that Facebook is prohibited from producing under the SCA.

17 **SECOND SUPPLEMENTAL RESPONSE TO DOCUMENT REQUEST NO. 13:**

18 Facebook incorporates each of the General Objections as if they were stated in full and
19 further objects to this Request to the extent that it: (1) is vague and ambiguous; (2) is overly
20 broad and unduly burdensome in seeking "all DOCUMENTS AND COMMUNICATIONS
21 CONCERNING FACEBOOK's decision..."; (3) calls for information covered by the attorney-
22 client and work product privileges; (4) calls for confidential information in the absence of the
23 entry of a suitable protective order; (5) seeks documents that are not relevant to the subject matter
24 of this litigation and not reasonably calculated to lead to the discovery of admissible evidence; (6)
25 seeks information equally available to Plaintiff; and (7) seeks the content of electronic
26 communications that Facebook is prohibited from producing under the SCA.

27 Subject to and without waiving the foregoing objections, Facebook will produce
28 responsive, non-privileged documents that it locates, if any, after a reasonable search that are

1 sufficient to show Facebook's reasons for providing Developers access to the Friends' Photos
2 Endpoint.

3 **DOCUMENT REQUEST NO. 14:**

4 All DOCUMENTS AND COMMUNICATIONS CONCERNING FACEBOOK's
5 announcement of its decision to permit DEVELOPERS to access the USER's FRIENDS Photos
6 ENDPOINT, INCLUDING any such announcement by Bret Taylor at the F8 Developers
7 Conference in 2010.

8 **RESPONSE TO DOCUMENT REQUEST NO. 14:**

9 Facebook incorporates each of the General Objections as if they were stated in full and
10 further objects to this Request to the extent that it: (1) is duplicative and cumulative of prior
11 Requests; (2) is vague and ambiguous; (3) is overly broad and unduly burdensome in seeking "all
12 DOCUMENTS AND COMMUNICATIONS"; (4) calls for information covered by the attorney-
13 client and work product privileges; (5) calls for confidential information in the absence of the
14 entry of a suitable protective order; (6) seeks documents that are not relevant to the subject matter
15 of this litigation and not reasonably calculated to lead to the discovery of admissible evidence; (7)
16 seeks information equally available to Plaintiff; (8) is premature as Facebook's Demurrer to
17 Plaintiff's Complaint is not due until September 8, 2015; and (9) seeks the content of electronic
18 communications that Facebook is prohibited from producing under the SCA.

19 **SUPPLEMENTAL RESPONSE TO DOCUMENT REQUEST NO. 14:**

20 Facebook incorporates each of the General Objections as if they were stated in full and
21 further objects to this Request to the extent that it: (1) is duplicative and cumulative of prior
22 Requests; (2) is vague and ambiguous; (3) is overly broad and unduly burdensome in seeking "all
23 DOCUMENTS AND COMMUNICATIONS CONCERNING FACEBOOK's announcement...";
24 (4) calls for information covered by the attorney-client and work product privileges; (5) calls for
25 confidential information in the absence of the entry of a suitable protective order; (6) seeks
26 documents that are not relevant to the subject matter of this litigation and not reasonably
27 calculated to lead to the discovery of admissible evidence; (7) seeks information equally available
28

1 to Plaintiff; and (8) seeks the content of electronic communications that Facebook is prohibited
2 from producing under the SCA.

3 Subject to and without waiving the foregoing objections, Facebook will produce
4 responsive, non-privileged documents that it locates, if any, after a reasonable search that are
5 sufficient to show the contents of the public announcement of Facebook's decision to permit
6 Developers to access the user's FRIENDS Photos ENDPOINT, including any such announcement
7 by Bret Taylor at the F8 Developers Conference in 2010.

8 **SECOND SUPPLEMENTAL RESPONSE TO DOCUMENT REQUEST NO. 14:**

9 Facebook incorporates each of the General Objections as if they were stated in full and
10 further objects to this Request to the extent that it: (1) is duplicative and cumulative of prior
11 Requests; (2) is vague and ambiguous; (3) is overly broad and unduly burdensome in seeking "all
12 DOCUMENTS AND COMMUNICATIONS CONCERNING FACEBOOK's announcement...";
13 (4) calls for information covered by the attorney-client and work product privileges; (5) calls for
14 confidential information in the absence of the entry of a suitable protective order; (6) seeks
15 documents that are not relevant to the subject matter of this litigation and not reasonably
16 calculated to lead to the discovery of admissible evidence; (7) seeks information equally available
17 to Plaintiff; and (8) seeks the content of electronic communications that Facebook is prohibited
18 from producing under the SCA.

19 Subject to and without waiving the foregoing objections, Facebook will produce
20 responsive, non-privileged documents that it locates, if any, after a reasonable search.

21 **DOCUMENT REQUEST NO. 15:**

22 All DOCUMENTS AND COMMUNICATIONS CONCERNING any privacy concerns
23 associated with permitting DEVELOPER access to the USER's FRIENDS Photos ENDPOINT.

24 **RESPONSE TO DOCUMENT REQUEST NO. 15:**

25 Facebook incorporates each of the General Objections as if they were stated in full and
26 further objects to this Request to the extent that it: (1) is vague and ambiguous; (2) is vague and
27 ambiguous as to the term "privacy concerns"; (3) is overly broad and unduly burdensome in
28 seeking "all DOCUMENTS AND COMMUNICATIONS"; (4) calls for information covered by

1 the attorney-client and work product privileges; (5) calls for confidential information in the
2 absence of the entry of a suitable protective order; (6) seeks documents that are not relevant to the
3 subject matter of this litigation and not reasonably calculated to lead to the discovery of
4 admissible evidence; (7) seeks information equally available to Plaintiff; (8) is premature as
5 Facebook's Demurrer to Plaintiff's Complaint is not due until September 8, 2015; and (9) seeks
6 the content of electronic communications that Facebook is prohibited from producing under the
7 SCA.

8 **SUPPLEMENTAL RESPONSE TO DOCUMENT REQUEST NO. 15:**

9 Facebook incorporates each of the General Objections as if they were stated in full and
10 further objects to this Request to the extent that it: (1) is vague and ambiguous; (2) is vague and
11 ambiguous as to the term "privacy concerns"; (3) is overly broad and unduly burdensome in
12 seeking "all DOCUMENTS AND COMMUNICATIONS CONCERNING any privacy
13 concerns..."; (4) calls for information covered by the attorney-client and work product privileges;
14 (5) calls for confidential information in the absence of the entry of a suitable protective order; (6)
15 seeks documents that are not relevant to the subject matter of this litigation and not reasonably
16 calculated to lead to the discovery of admissible evidence; (7) seeks information equally available
17 to Plaintiff; and (8) seeks the content of electronic communications that Facebook is prohibited
18 from producing under the SCA.

19 **DOCUMENT REQUEST NO. 16:**

20 All DOCUMENTS AND COMMUNICATIONS CONCERNING any reservation of
21 rights on the part of FACEBOOK to close or modify DEVELOPER access to USER's FRIENDS
22 Photos ENDPOINT, in whole or in part.

23 **RESPONSE TO DOCUMENT REQUEST NO. 16:**

24 Facebook incorporates each of the General Objections as if they were stated in full and
25 further objects to this Request to the extent that it: (1) is duplicative and cumulative of prior
26 Requests; (2) is vague and ambiguous; (3) is vague and ambiguous as to the terms "reservation of
27 rights," "close," and "access"; (4) is overly broad and unduly burdensome in seeking "all
28 DOCUMENTS AND COMMUNICATIONS"; (5) calls for information covered by the attorney-

1 client and work product privileges; (6) calls for confidential information in the absence of the
2 entry of a suitable protective order; (7) seeks documents that are not relevant to the subject matter
3 of this litigation and not reasonably calculated to lead to the discovery of admissible evidence; (8)
4 seeks information equally available to Plaintiff; (9) is premature as Facebook's Demurrer to
5 Plaintiff's Complaint is not due until September 8, 2015; and (10) seeks the content of electronic
6 communications that Facebook is prohibited from producing under the SCA.

7 **SUPPLEMENTAL RESPONSE TO DOCUMENT REQUEST NO. 16:**

8 Facebook incorporates each of the General Objections as if they were stated in full and
9 further objects to this Request to the extent that it: (1) is duplicative and cumulative of prior
10 Requests; (2) is vague and ambiguous; (3) is vague and ambiguous as to the terms "reservation of
11 rights," "close," and "access"; (4) is overly broad and unduly burdensome in seeking "all
12 DOCUMENTS AND COMMUNICATIONS CONCERNING any reservation of rights..."; (5)
13 calls for information covered by the attorney-client and work product privileges; (6) calls for
14 confidential information in the absence of the entry of a suitable protective order; (7) seeks
15 documents that are not relevant to the subject matter of this litigation and not reasonably
16 calculated to lead to the discovery of admissible evidence; (8) seeks information equally available
17 to Plaintiff; and (9) seeks the content of electronic communications that Facebook is prohibited
18 from producing under the SCA.

19 Subject to and without waiving the foregoing objections, Facebook will produce
20 responsive, non-privileged documents that it locates, if any, after a reasonable search sufficient to
21 show Facebook's reservation of rights to close or modify Developer access to user's FRIENDS
22 Photos ENDPOINT, in whole or in part.

23 **DOCUMENT REQUEST NO. 17:**

24 All DOCUMENTS AND COMMUNICATIONS CONCERNING "Operation Developer
25 Love," INCLUDING as that term is referenced on
26 [https://developers.facebook.com/blog/post/2012/10/03/platform-updates--operation-developer-](https://developers.facebook.com/blog/post/2012/10/03/platform-updates--operation-developer-love/)
27 [love/](https://developers.facebook.com/blog/post/2012/10/03/platform-updates--operation-developer-love/).

1 **RESPONSE TO DOCUMENT REQUEST NO. 17:**

2 Facebook incorporates each of the General Objections as if they were stated in full and
3 further objects to this Request to the extent that it: (1) is vague and ambiguous; (2) is overly
4 broad and unduly burdensome in seeking “all DOCUMENTS AND COMMUNICATIONS
5 CONCERNING ‘Operation Developer Love’...”; (3) calls for information covered by the
6 attorney-client and work product privileges; (4) calls for confidential information in the absence
7 of the entry of a suitable protective order; (5) seeks documents that are not relevant to the subject
8 matter of this litigation and not reasonably calculated to lead to the discovery of admissible
9 evidence; (6) seeks information equally available to Plaintiff; (7) is premature as Facebook’s
10 Demurrer to Plaintiff’s Complaint is not due until September 8, 2015; and (8) seeks the content of
11 electronic communications that Facebook is prohibited from producing under the SCA.

12 **SUPPLEMENTAL RESPONSE TO DOCUMENT REQUEST NO. 17:**

13 Facebook incorporates each of the General Objections as if they were stated in full and
14 further objects to this Request to the extent that it: (1) is vague and ambiguous; (2) is overly
15 broad and unduly burdensome in seeking “all DOCUMENTS AND COMMUNICATIONS”; (3)
16 calls for information covered by the attorney-client and work product privileges; (4) calls for
17 confidential information in the absence of the entry of a suitable protective order; (5) seeks
18 documents that are not relevant to the subject matter of this litigation and not reasonably
19 calculated to lead to the discovery of admissible evidence; (6) seeks information equally available
20 to Plaintiff; and (7) seeks the content of electronic communications that Facebook is prohibited
21 from producing under the SCA.

22 **DOCUMENT REQUEST NO. 18:**

23 All DOCUMENTS AND COMMUNICATIONS CONCERNING FACEBOOK’S
24 decision to refer to Graph API with version numbers, INCLUDING use of the term “versioning.”

25 **RESPONSE TO DOCUMENT REQUEST NO. 18:**

26 Facebook incorporates each of the General Objections as if they were stated in full and
27 further objects to this Request to the extent that it: (1) is vague and ambiguous; (2) is overly
28 broad and unduly burdensome in seeking “all DOCUMENTS AND COMMUNICATIONS”; (3)

1 calls for information covered by the attorney-client and work product privileges; (4) calls for
2 confidential information in the absence of the entry of a suitable protective order; (5) seeks
3 documents that are not relevant to the subject matter of this litigation and not reasonably
4 calculated to lead to the discovery of admissible evidence; (6) seeks information equally available
5 to Plaintiff; (7) is premature as Facebook's Demurrer to Plaintiff's Complaint is not due until
6 September 8, 2015; and (8) seeks the content of electronic communications that Facebook is
7 prohibited from producing under the SCA.

8 **SUPPLEMENTAL RESPONSE TO DOCUMENT REQUEST NO. 18:**

9 Facebook incorporates each of the General Objections as if they were stated in full and
10 further objects to this Request to the extent that it: (1) is vague and ambiguous; (2) is overly
11 broad and unduly burdensome in seeking "all DOCUMENTS AND COMMUNICATIONS
12 CONCERNING Facebook's decision..."; (3) calls for information covered by the attorney-client
13 and work product privileges; (4) calls for confidential information in the absence of the entry of a
14 suitable protective order; (5) seeks documents that are not relevant to the subject matter of this
15 litigation and not reasonably calculated to lead to the discovery of admissible evidence; (6) seeks
16 information equally available to Plaintiff; and (7) seeks the content of electronic communications
17 that Facebook is prohibited from producing under the SCA.

18 **DOCUMENT REQUEST NO. 19:**

19 All DOCUMENTS AND COMMUNICATIONS CONCERNING FACEBOOK's
20 decision to introduce Graph API v. 2.0.

21 **RESPONSE TO DOCUMENT REQUEST NO. 19:**

22 Facebook incorporates each of the General Objections as if they were stated in full and
23 further objects to this Request to the extent that it: (1) is vague and ambiguous; (2) is overly
24 broad and unduly burdensome in seeking "all DOCUMENTS AND COMMUNICATIONS"; (3)
25 calls for information covered by the attorney-client and work product privileges; (4) calls for
26 confidential information in the absence of the entry of a suitable protective order; (5) seeks
27 documents that are not relevant to the subject matter of this litigation and not reasonably
28 calculated to lead to the discovery of admissible evidence; (6) seeks information equally available

1 to Plaintiff; (7) is premature as Facebook's Demurrer to Plaintiff's Complaint is not due until
2 September 8, 2015; and (8) seeks the content of electronic communications that Facebook is
3 prohibited from producing under the SCA.

4 **SUPPLEMENTAL RESPONSE TO DOCUMENT REQUEST NO. 19:**

5 Facebook incorporates each of the General Objections as if they were stated in full and
6 further objects to this Request to the extent that it: (1) is vague and ambiguous; (2) is overly
7 broad and unduly burdensome in seeking "all DOCUMENTS AND COMMUNICATIONS
8 CONCERNING FACEBOOK's decision..."; (3) calls for information covered by the attorney-
9 client and work product privileges; (4) calls for confidential information in the absence of the
10 entry of a suitable protective order; (5) seeks documents that are not relevant to the subject matter
11 of this litigation and not reasonably calculated to lead to the discovery of admissible evidence; (6)
12 seeks information equally available to Plaintiff; and (7) seeks the content of electronic
13 communications that Facebook is prohibited from producing under the SCA.

14 **DOCUMENT REQUEST NO. 20:**

15 All DOCUMENTS AND COMMUNICATIONS CONCERNING FACEBOOK's
16 decision to end DEVELOPER access to the USER's FRIENDS Photos ENDPOINT.

17 **RESPONSE TO DOCUMENT REQUEST NO. 20:**

18 Facebook incorporates each of the General Objections as if they were stated in full and
19 further objects to this Request to the extent that it: (1) is vague and ambiguous; (2) is overly
20 broad and unduly burdensome in seeking "all DOCUMENTS AND COMMUNICATIONS"; (3)
21 calls for information covered by the attorney-client and work product privileges; (4) calls for
22 confidential information in the absence of the entry of a suitable protective order; (5) seeks
23 documents that are not relevant to the subject matter of this litigation and not reasonably
24 calculated to lead to the discovery of admissible evidence; (6) seeks information equally available
25 to Plaintiff; (7) is premature as Facebook's Demurrer to Plaintiff's Complaint is not due until
26 September 8, 2015; and (8) seeks the content of electronic communications that Facebook is
27 prohibited from producing under the SCA.

1 **SUPPLEMENTAL RESPONSE TO DOCUMENT REQUEST NO. 20:**

2 Facebook incorporates each of the General Objections as if they were stated in full and
3 further objects to this Request to the extent that it: (1) is vague and ambiguous; (2) is overly
4 broad and unduly burdensome in seeking “all DOCUMENTS AND COMMUNICATIONS
5 CONCERNING FACEBOOK’s decision...”; (3) calls for information covered by the attorney-
6 client and work product privileges; (4) calls for confidential information in the absence of the
7 entry of a suitable protective order; (5) seeks documents that are not relevant to the subject matter
8 of this litigation and not reasonably calculated to lead to the discovery of admissible evidence; (6)
9 seeks information equally available to Plaintiff; and (7) seeks the content of electronic
10 communications that Facebook is prohibited from producing under the SCA.

11 **SECOND SUPPLEMENTAL RESPONSE TO DOCUMENT REQUEST NO. 20:**

12 Facebook incorporates each of the General Objections as if they were stated in full and
13 further objects to this Request to the extent that it: (1) is vague and ambiguous; (2) is overly
14 broad and unduly burdensome in seeking “all DOCUMENTS AND COMMUNICATIONS
15 CONCERNING FACEBOOK’s decision...”; (3) calls for information covered by the attorney-
16 client and work product privileges; (4) calls for confidential information in the absence of the
17 entry of a suitable protective order; (5) seeks documents that are not relevant to the subject matter
18 of this litigation and not reasonably calculated to lead to the discovery of admissible evidence; (6)
19 seeks information equally available to Plaintiff; and (7) seeks the content of electronic
20 communications that Facebook is prohibited from producing under the SCA.

21 Subject to and without waiving the foregoing objections, Facebook will produce
22 responsive, non-privileged documents that it locates, if any, after a reasonable search that are
23 sufficient to show Facebook’s reasons for closing access to the Friends’ Photos Endpoint.

24 **DOCUMENT REQUEST NO. 21:**

25 All DOCUMENTS AND COMMUNICATIONS CONCERNING FACEBOOK’s
26 announcement of Graph API v. 2.0, INCLUDING any such announcement at the F8 Developers
27 Conference in 2014.

1 **RESPONSE TO DOCUMENT REQUEST NO. 21:**

2 Facebook incorporates each of the General Objections as if they were stated in full and
3 further objects to this Request to the extent that it: (1) is duplicative and cumulative of prior
4 Requests; (2) is vague and ambiguous; (3) is overly broad and unduly burdensome in seeking “all
5 DOCUMENTS AND COMMUNICATIONS”; (4) calls for information covered by the attorney-
6 client and work product privileges; (5) calls for confidential information in the absence of the
7 entry of a suitable protective order; (6) seeks documents that are not relevant to the subject matter
8 of this litigation and not reasonably calculated to lead to the discovery of admissible evidence; (7)
9 seeks information equally available to Plaintiff; (8) is premature as Facebook’s Demurrer to
10 Plaintiff’s Complaint is not due until September 8, 2015; and (9) seeks the content of electronic
11 communications that Facebook is prohibited from producing under the SCA.

12 **SUPPLEMENTAL RESPONSE TO DOCUMENT REQUEST NO. 21:**

13 Facebook incorporates each of the General Objections as if they were stated in full and
14 further objects to this Request to the extent that it: (1) is duplicative and cumulative of prior
15 Requests; (2) is vague and ambiguous; (3) is overly broad and unduly burdensome in seeking “all
16 DOCUMENTS AND COMMUNICATIONS CONCERNING FACEBOOK’s announcement...”;
17 (4) calls for information covered by the attorney-client and work product privileges; (5) calls for
18 confidential information in the absence of the entry of a suitable protective order; (6) seeks
19 documents that are not relevant to the subject matter of this litigation and not reasonably
20 calculated to lead to the discovery of admissible evidence; (7) seeks information equally available
21 to Plaintiff; and (8) seeks the content of electronic communications that Facebook is prohibited
22 from producing under the SCA.

23 Subject to and without waiving the foregoing objections, Facebook will produce
24 responsive, non-privileged documents that it locates, if any, after a reasonable search that are
25 sufficient to show the content of Facebook’s public announcement of Graph API v. 2.0, including
26 any such announcement at the F8 Developers Conference in 2014.

1 **SECOND SUPPLEMENTAL RESPONSE TO DOCUMENT REQUEST NO. 21:**

2 Facebook incorporates each of the General Objections as if they were stated in full and
3 further objects to this Request to the extent that it: (1) is duplicative and cumulative of prior
4 Requests; (2) is vague and ambiguous; (3) is overly broad and unduly burdensome in seeking “all
5 DOCUMENTS AND COMMUNICATIONS CONCERNING FACEBOOK’s announcement...”;
6 (4) calls for information covered by the attorney-client and work product privileges; (5) calls for
7 confidential information in the absence of the entry of a suitable protective order; (6) seeks
8 documents that are not relevant to the subject matter of this litigation and not reasonably
9 calculated to lead to the discovery of admissible evidence; (7) seeks information equally available
10 to Plaintiff; and (8) seeks the content of electronic communications that Facebook is prohibited
11 from producing under the SCA.

12 Subject to and without waiving the foregoing objections, Facebook will produce
13 responsive, non-privileged documents that it locates, if any, after a reasonable search.

14 **DOCUMENT REQUEST NO. 22:**

15 All DOCUMENTS AND COMMUNICATIONS CONCERNING FACEBOOK’s
16 announcement of its decision to end DEVELOPER access to the USER’s FRIENDS Photos
17 ENDPOINT, INCLUDING any such announcement at the F8 Developers Conference in 2014.

18 **RESPONSE TO DOCUMENT REQUEST NO. 22:**

19 Facebook incorporates each of the General Objections as if they were stated in full and
20 further objects to this Request to the extent that it: (1) is duplicative and cumulative of prior
21 Requests; (2) is vague and ambiguous; (3) is overly broad and unduly burdensome in seeking “all
22 DOCUMENTS AND COMMUNICATIONS”; (4) calls for information covered by the attorney-
23 client and work product privileges; (5) calls for confidential information in the absence of the
24 entry of a suitable protective order; (6) seeks documents that are not relevant to the subject matter
25 of this litigation and not reasonably calculated to lead to the discovery of admissible evidence; (7)
26 seeks information equally available to Plaintiff; (8) is premature as Facebook’s Demurrer to
27 Plaintiff’s Complaint is not due until September 8, 2015; and (9) seeks the content of electronic
28 communications that Facebook is prohibited from producing under the SCA.

1 **SUPPLEMENTAL RESPONSE TO DOCUMENT REQUEST NO. 22:**

2 Facebook incorporates each of the General Objections as if they were stated in full and
3 further objects to this Request to the extent that it: (1) is duplicative and cumulative of prior
4 Requests; (2) is vague and ambiguous; (3) is overly broad and unduly burdensome in seeking “all
5 DOCUMENTS AND COMMUNICATIONS CONCERNING FACEBOOK’s announcement...”;
6 (4) calls for information covered by the attorney-client and work product privileges; (5) calls for
7 confidential information in the absence of the entry of a suitable protective order; (6) seeks
8 documents that are not relevant to the subject matter of this litigation and not reasonably
9 calculated to lead to the discovery of admissible evidence; (7) seeks information equally available
10 to Plaintiff; and (8) seeks the content of electronic communications that Facebook is prohibited
11 from producing under the SCA.

12 Subject to and without waiving the foregoing objections, Facebook will produce
13 responsive, non-privileged documents that it locates, if any, after a reasonable search sufficient to
14 show the contents of Facebook’s public announcement of its decision to end Developer access to
15 the user’s Friends Photos Endpoint, including any such announcement at the F8 Developers
16 Conference in 2014.

17 **SECOND SUPPLEMENTAL RESPONSE TO DOCUMENT REQUEST NO. 22:**

18 Facebook incorporates each of the General Objections as if they were stated in full and
19 further objects to this Request to the extent that it: (1) is duplicative and cumulative of prior
20 Requests; (2) is vague and ambiguous; (3) is overly broad and unduly burdensome in seeking “all
21 DOCUMENTS AND COMMUNICATIONS CONCERNING FACEBOOK’s announcement...”;
22 (4) calls for information covered by the attorney-client and work product privileges; (5) calls for
23 confidential information in the absence of the entry of a suitable protective order; (6) seeks
24 documents that are not relevant to the subject matter of this litigation and not reasonably
25 calculated to lead to the discovery of admissible evidence; (7) seeks information equally available
26 to Plaintiff; and (8) seeks the content of electronic communications that Facebook is prohibited
27 from producing under the SCA.

1 Subject to and without waiving the foregoing objections, Facebook will produce
2 responsive, non-privileged documents that it locates, if any, after a reasonable search.

3 **DOCUMENT REQUEST NO. 23:**

4 All DOCUMENTS AND COMMUNICATIONS CONCERNING any
5 COMMUNICATIONS from DEVELOPERS CONCERNING the introduction of Graph API v.
6 2.0, INCLUDING FACEBOOK's decision to end access to the USER's FRIENDS Photos
7 ENDPOINT and other ENDPOINTS.

8 **RESPONSE TO DOCUMENT REQUEST NO. 23:**

9 Facebook incorporates each of the General Objections as if they were stated in full and
10 further objects to this Request to the extent that it: (1) is duplicative and cumulative of prior
11 Requests; (2) is vague and ambiguous; (3) is overly broad and unduly burdensome in seeking "all
12 DOCUMENTS AND COMMUNICATIONS"; (4) calls for information covered by the attorney-
13 client and work product privileges; (5) calls for confidential information in the absence of the
14 entry of a suitable protective order; (6) seeks documents that are not relevant to the subject matter
15 of this litigation and not reasonably calculated to lead to the discovery of admissible evidence; (7)
16 seeks information equally available to Plaintiff; (8) is premature as Facebook's Demurrer to
17 Plaintiff's Complaint is not due until September 8, 2015; and (9) seeks the content of electronic
18 communications that Facebook is prohibited from producing under the SCA.

19 **SUPPLEMENTAL RESPONSE TO DOCUMENT REQUEST NO. 23:**

20 Facebook incorporates each of the General Objections as if they were stated in full and
21 further objects to this Request to the extent that it: (1) is duplicative and cumulative of prior
22 Requests; (2) is vague and ambiguous; (3) is overly broad and unduly burdensome in seeking "all
23 DOCUMENTS AND COMMUNICATIONS CONCERNING any COMMUNICATIONS...";
24 (4) calls for information covered by the attorney-client and work product privileges; (5) calls for
25 confidential information in the absence of the entry of a suitable protective order; (6) seeks
26 documents that are not relevant to the subject matter of this litigation and not reasonably
27 calculated to lead to the discovery of admissible evidence; (7) seeks information equally available
28

1 to Plaintiff; and (8) seeks the content of electronic communications that Facebook is prohibited
2 from producing under the SCA.

3 **DOCUMENT REQUEST NO. 24:**

4 All DOCUMENTS AND COMMUNICATIONS CONCERNING any accommodations
5 or exceptions made to permit continued DEVELOPER access to ENDPOINTS after the
6 introduction of Graph API v. 2.0.

7 **RESPONSE TO DOCUMENT REQUEST NO. 24:**

8 Facebook incorporates each of the General Objections as if they were stated in full and
9 further objects to this Request to the extent that it: (1) is vague and ambiguous; (2) is overly
10 broad and unduly burdensome in seeking “all DOCUMENTS AND COMMUNICATIONS”; (3)
11 calls for information covered by the attorney-client and work product privileges; (4) calls for
12 confidential information in the absence of the entry of a suitable protective order; (5) seeks
13 documents that are not relevant to the subject matter of this litigation and not reasonably
14 calculated to lead to the discovery of admissible evidence; (6) seeks information equally available
15 to Plaintiff; (7) is premature as Facebook’s Demurrer to Plaintiff’s Complaint is not due until
16 September 8, 2015; and (8) seeks the content of electronic communications that Facebook is
17 prohibited from producing under the SCA.

18 **SUPPLEMENTAL RESPONSE TO DOCUMENT REQUEST NO. 24:**

19 Facebook incorporates each of the General Objections as if they were stated in full and
20 further objects to this Request to the extent that it: (1) is vague and ambiguous; (2) is overly
21 broad and unduly burdensome in seeking “all DOCUMENTS AND COMMUNICATIONS”; (3)
22 calls for information covered by the attorney-client and work product privileges; (4) calls for
23 confidential information in the absence of the entry of a suitable protective order; (5) seeks
24 documents that are not relevant to the subject matter of this litigation and not reasonably
25 calculated to lead to the discovery of admissible evidence; (6) seeks information equally available
26 to Plaintiff; and (7) seeks the content of electronic communications that Facebook is prohibited
27 from producing under the SCA.
28

1 **DOCUMENT REQUEST NO. 25:**

2 All DOCUMENTS AND COMMUNICATIONS CONCERNING FACEBOOK's
3 intention to use image recognition software to permit USERS to sort or search through their
4 photos or their FRIENDS' photos.

5 **RESPONSE TO DOCUMENT REQUEST NO. 25:**

6 Facebook incorporates each of the General Objections as if they were stated in full and
7 further objects to this Request to the extent that it: (1) is vague and ambiguous; (2) is overly
8 broad and unduly burdensome in seeking "all DOCUMENTS AND COMMUNICATIONS"; (3)
9 calls for information covered by the attorney-client and work product privileges; (4) calls for
10 confidential information in the absence of the entry of a suitable protective order; (5) seeks
11 documents that are not relevant to the subject matter of this litigation and not reasonably
12 calculated to lead to the discovery of admissible evidence; (6) seeks information equally available
13 to Plaintiff; (7) is premature as Facebook's Demurrer to Plaintiff's Complaint is not due until
14 September 8, 2015; and (8) seeks the content of electronic communications that Facebook is
15 prohibited from producing under the SCA.

16 **SUPPLEMENTAL RESPONSE TO DOCUMENT REQUEST NO. 25:**

17 Facebook incorporates each of the General Objections as if they were stated in full and
18 further objects to this Request to the extent that it: (1) is vague and ambiguous; (2) is overly
19 broad and unduly burdensome in seeking "all DOCUMENTS AND COMMUNICATIONS
20 CONCERNING FACEBOOK's intention..."; (3) calls for information covered by the attorney-
21 client and work product privileges; (4) calls for confidential information in the absence of the
22 entry of a suitable protective order; (5) seeks documents that are not relevant to the subject matter
23 of this litigation and not reasonably calculated to lead to the discovery of admissible evidence; (6)
24 seeks information equally available to Plaintiff; and (7) seeks the content of electronic
25 communications that Facebook is prohibited from producing under the SCA.

1 **DOCUMENT REQUEST NO. 26:**

2 All DOCUMENTS AND COMMUNICATIONS CONCERNING FACEBOOK's
3 intention to use image recognition software to permit USERS to sort or search through photos on
4 Instagram.

5 **RESPONSE TO DOCUMENT REQUEST NO. 26:**

6 Facebook incorporates each of the General Objections as if they were stated in full and
7 further objects to this Request to the extent that it: (1) is vague and ambiguous; (2) is overly
8 broad and unduly burdensome in seeking "all DOCUMENTS AND COMMUNICATIONS"; (3)
9 calls for information covered by the attorney-client and work product privileges; (4) calls for
10 confidential information in the absence of the entry of a suitable protective order; (5) seeks
11 documents that are not relevant to the subject matter of this litigation and not reasonably
12 calculated to lead to the discovery of admissible evidence; (6) seeks information equally available
13 to Plaintiff; (7) is premature as Facebook's Demurrer to Plaintiff's Complaint is not due until
14 September 8, 2015; and (8) seeks the content of electronic communications that Facebook is
15 prohibited from producing under the SCA.

16 **SUPPLEMENTAL RESPONSE TO DOCUMENT REQUEST NO. 26:**

17 Facebook incorporates each of the General Objections as if they were stated in full and
18 further objects to this Request to the extent that it: (1) is vague and ambiguous; (2) is overly
19 broad and unduly burdensome in seeking "all DOCUMENTS AND COMMUNICATIONS"; (3)
20 calls for information covered by the attorney-client and work product privileges; (4) calls for
21 confidential information in the absence of the entry of a suitable protective order; (5) seeks
22 documents that are not relevant to the subject matter of this litigation and not reasonably
23 calculated to lead to the discovery of admissible evidence; (6) seeks information equally available
24 to Plaintiff; and (7) seeks the content of electronic communications that Facebook is prohibited
25 from producing under the SCA.

26 **DOCUMENT REQUEST NO. 27:**

27 All DOCUMENTS AND COMMUNICATIONS CONCERNING FACEBOOK's policies
28 regarding DEVELOPERS' ability to show data obtained from one USER to another,

1 INCLUDING FACEBOOK PLATFORM Policy ¶ 3.2. *See*

2 <https://developers.facebook.com/policy/> (“Only show data obtained from a user access token on
3 the devices associated with that token.”).

4 **RESPONSE TO DOCUMENT REQUEST NO. 27:**

5 Facebook incorporates each of the General Objections as if they were stated in full and
6 further objects to this Request to the extent that it: (1) is vague and ambiguous; (2) is overly
7 broad and unduly burdensome in seeking “all DOCUMENTS AND COMMUNICATIONS”; (3)
8 calls for information covered by the attorney-client and work product privileges; (4) calls for
9 confidential information in the absence of the entry of a suitable protective order; (5) seeks
10 documents that are not relevant to the subject matter of this litigation and not reasonably
11 calculated to lead to the discovery of admissible evidence; (6) seeks information equally available
12 to Plaintiff; (7) is premature as Facebook’s Demurrer to Plaintiff’s Complaint is not due until
13 September 8, 2015; and (8) seeks the content of electronic communications that Facebook is
14 prohibited from producing under the SCA.

15 **SUPPLEMENTAL RESPONSE TO DOCUMENT REQUEST NO. 27:**

16 Facebook incorporates each of the General Objections as if they were stated in full and
17 further objects to this Request to the extent that it: (1) is vague and ambiguous; (2) is overly
18 broad and unduly burdensome in seeking “all DOCUMENTS AND COMMUNICATIONS”; (3)
19 calls for information covered by the attorney-client and work product privileges; (4) calls for
20 confidential information in the absence of the entry of a suitable protective order; (5) seeks
21 documents that are not relevant to the subject matter of this litigation and not reasonably
22 calculated to lead to the discovery of admissible evidence; (6) seeks information equally available
23 to Plaintiff; and (7) seeks the content of electronic communications that Facebook is prohibited
24 from producing under the SCA.

25 **DOCUMENT REQUEST NO. 28:**

26 All DOCUMENTS AND COMMUNICATIONS CONCERNING FACEBOOK’s policies
27 regarding DEVELOPERS’ ability to retain USER data, INCLUDING FACEBOOK PLATFORM
28

1 Policy ¶ 3.4. See <https://developers.facebook.com/policy/> (“If you cache data you receive from
2 us, use it to improve your app’s user experience and keep it up to date.”).

3 **RESPONSE TO DOCUMENT REQUEST NO. 28:**

4 Facebook incorporates each of the General Objections as if they were stated in full and
5 further objects to this Request to the extent that it: (1) is vague and ambiguous; (2) is overly
6 broad and unduly burdensome in seeking “all DOCUMENTS AND COMMUNICATIONS”; (3)
7 calls for information covered by the attorney-client and work product privileges; (4) calls for
8 confidential information in the absence of the entry of a suitable protective order; (5) seeks
9 documents that are not relevant to the subject matter of this litigation and not reasonably
10 calculated to lead to the discovery of admissible evidence; (6) seeks information equally available
11 to Plaintiff; (7) is premature as Facebook’s Demurrer to Plaintiff’s Complaint is not due until
12 September 8, 2015; and (8) seeks the content of electronic communications that Facebook is
13 prohibited from producing under the SCA.

14 **SUPPLEMENTAL RESPONSE TO DOCUMENT REQUEST NO. 28:**

15 Facebook incorporates each of the General Objections as if they were stated in full and
16 further objects to this Request to the extent that it: (1) is vague and ambiguous; (2) is overly
17 broad and unduly burdensome in seeking “all DOCUMENTS AND COMMUNICATIONS”; (3)
18 calls for information covered by the attorney-client and work product privileges; (4) calls for
19 confidential information in the absence of the entry of a suitable protective order; (5) seeks
20 documents that are not relevant to the subject matter of this litigation and not reasonably
21 calculated to lead to the discovery of admissible evidence; (6) seeks information equally available
22 to Plaintiff; and (7) seeks the content of electronic communications that Facebook is prohibited
23 from producing under the SCA.

24 **DOCUMENT REQUEST NO. 29:**

25 All DOCUMENTS identified, mentioned, referenced, reviewed, or relied upon in the
26 preparation of DEFENDANT’s answers to any of PLAINTIFF’s interrogatories served on
27 DEFENDANT in this matter.
28

1 **RESPONSE TO DOCUMENT REQUEST NO. 29:**

2 Facebook incorporates each of the General Objections as if they were stated in full and
3 further objects to this Request to the extent that it: (1) is overly broad and unduly burdensome in
4 seeking “all DOCUMENTS;” (2) is premature as Facebook has not been served with
5 interrogatories; and (3) is premature as Facebook’s Demurrer to Plaintiff’s Complaint is not due
6 until September 8, 2015.

7 **SUPPLEMENTAL RESPONSE TO DOCUMENT REQUEST NO. 29:**

8 Facebook incorporates each of the General Objections as if they were stated in full and
9 further objects to this Request to the extent that it: (1) is overly broad and unduly burdensome in
10 seeking “all DOCUMENTS” and (2) is premature as Facebook has not been served with
11 interrogatories.

12 Subject to and without waiving the foregoing objections, Facebook responds that it has
13 not been served with interrogatories and therefore has no documents responsive to this Request.

14 **DOCUMENT REQUEST NO. 30:**

15 All DOCUMENTS CONCERNING any legal and factual allegations, affirmative
16 defenses, and requests for relief in DEFENDANT’s Answer or other response to the Complaint,
17 as well as in any subsequently added or supplemental pleading in this Action.

18 **RESPONSE TO DOCUMENT REQUEST NO. 30:**

19 Facebook incorporates each of the General Objections as if they were stated in full and
20 further objects to this Request to the extent that it: (1) is overly broad and unduly burdensome in
21 seeking “all DOCUMENTS” and (2) is premature as Facebook’s Demurrer to Plaintiff’s
22 Complaint is not due until September 8, 2015.

23 **SUPPLEMENTAL RESPONSE TO DOCUMENT REQUEST NO. 30:**

24 Facebook incorporates each of the General Objections as if they were stated in full and
25 further objects to this Request to the extent that it is (1) overly broad and unduly burdensome in
26 seeking “all DOCUMENTS CONCERNING any legal and factual allegations, affirmative
27 defenses, and requests for relief....” and (2) premature, as it relates to events and deadlines in this
28 litigation that have not yet occurred.

1 **DOCUMENT REQUEST NO. 31:**

2 Organization chart(s) sufficient to describe the organizational structure of DEFENDANT
3 and the personnel in the areas responsible for FACEBOOK's Platform Policy, FACEBOOK's
4 Graph API policy, AND FACEBOOK's policies for DEVELOPERS in general.

5 **RESPONSE TO DOCUMENT REQUEST NO. 31:**

6 Facebook incorporates each of the General Objections as if they were stated in full and
7 further objects to this Request to the extent that it: (1) is compound; (2) seeks information
8 equally available to Plaintiff; and (3) is premature as Facebook's Demurrer to Plaintiff's
9 Complaint is not due until September 8, 2015.

10 **SUPPLEMENTAL RESPONSE TO DOCUMENT REQUEST NO. 31:**

11 Facebook incorporates each of the General Objections as if they were stated in full and
12 further objects to this Request to the extent that it: (1) is compound; and (2) seeks information
13 equally available to Plaintiff.

14 Subject to and without waiving the foregoing objections, Facebook responds that it will
15 produce non-privileged, responsive "Organization charts."

16 **DOCUMENT REQUEST NO. 32:**

17 All DOCUMENTS CONCERNING the retention of DOCUMENTS, whether formal or
18 informal, by DEFENDANT.

19 **RESPONSE TO DOCUMENT REQUEST NO. 32:**

20 Facebook incorporates each of the General Objections as if they were stated in full and
21 further objects to this Request to the extent that it: (1) is overly broad and unduly burdensome in
22 seeking "all DOCUMENTS"; (2) calls for information covered by the attorney-client and work
23 product privileges; (3) calls for confidential information in the absence of the entry of a suitable
24 protective order; (4) is premature as Facebook's Demurrer to Plaintiff's Complaint is not due
25 until September 8, 2015; and (5) seeks documents that are not relevant to the subject matter of
26 this litigation and not reasonably calculated to lead to the discovery of admissible evidence.
27
28

1 **SUPPLEMENTAL RESPONSE TO DOCUMENT REQUEST NO. 32:**

2 Facebook incorporates each of the General Objections as if they were stated in full and
3 further objects to this Request to the extent that it: (1) is overly broad and unduly burdensome in
4 seeking “all DOCUMENTS CONCERNING the retention of DOCUMENTS...”; (2) calls for
5 information covered by the attorney-client and work product privileges; (3) calls for confidential
6 information in the absence of the entry of a suitable protective order; and (4) seeks documents
7 that are not relevant to the subject matter of this litigation and not reasonably calculated to lead to
8 the discovery of admissible evidence.

9 Subject to and without waiving the foregoing objections, Facebook will produce
10 responsive, non-privileged documents that it locates, if any, after a reasonable search sufficient to
11 show Facebook’s document retention policies.

12 **DOCUMENT REQUEST NO. 33:**

13 All DOCUMENTS CONCERNING COMMUNICATIONS between PLAINTIFF AND
14 the DEFENDANT prior to initiation of this Action.

15 **RESPONSE TO DOCUMENT REQUEST NO. 33:**

16 Facebook incorporates each of the General Objections as if they were stated in full and
17 further objects to this Request to the extent that it: (1) is overly broad and unduly burdensome in
18 seeking “all DOCUMENTS”; (2) calls for information covered by the attorney-client and work
19 product privileges; (3) calls for confidential information in the absence of the entry of a suitable
20 protective order; (4) seeks documents that are not relevant to the subject matter of this litigation
21 and not reasonably calculated to lead to the discovery of admissible evidence; (5) seeks
22 information equally available to Plaintiff; (6) is premature as Facebook’s Demurrer to Plaintiff’s
23 Complaint is not due until September 8, 2015; and (7) seeks the content of electronic
24 communications that Facebook is prohibited from producing under the SCA.

25 **SUPPLEMENTAL RESPONSE TO DOCUMENT REQUEST NO. 33:**

26 Facebook incorporates each of the General Objections as if they were stated in full and
27 further objects to this Request to the extent that it: (1) is overly broad and unduly burdensome in
28 seeking “all DOCUMENTS CONCERNING COMMUNICATIONS...”; (2) calls for information

1 covered by the attorney-client and work product privileges; (3) calls for confidential information
2 in the absence of the entry of a suitable protective order; (4) seeks documents that are not relevant
3 to the subject matter of this litigation and not reasonably calculated to lead to the discovery of
4 admissible evidence; (5) seeks information equally available to Plaintiff; and (6) seeks the content
5 of electronic communications that Facebook is prohibited from producing under the SCA.

6 **DOCUMENT REQUEST NO. 34:**

7 All DOCUMENTS DEFENDANT intends to introduce at trial, OR in any pre-trial
8 submission to the Court in this Action.

9 **RESPONSE TO DOCUMENT REQUEST NO. 34:**

10 Facebook incorporates each of the General Objections as if they were stated in full and
11 further objects to this Request to the extent that it: (1) is overly broad and unduly burdensome in
12 seeking "all DOCUMENTS"; (2) calls for confidential information in the absence of the entry of
13 a suitable protective order; and (3) is premature, including because Facebook's Demurrer to
14 Plaintiff's Complaint is not due until September 8, 2015.

15 **SUPPLEMENTAL RESPONSE TO DOCUMENT REQUEST NO. 34:**

16 Facebook incorporates each of the General Objections as if they were stated in full and
17 further objects to this Request to the extent that it: (1) is overly broad and unduly burdensome in
18 seeking "all DOCUMENTS DEFENDANT intends to introduce..."; (2) calls for confidential
19 information in the absence of the entry of a suitable protective order; and (3) is premature, as it
20 relates to events and deadlines in this litigation that have not yet occurred.

21 DATED: August 25, 2016

PERKINS COIE LLP

22 By: 
23 _____

Julie E. Schwartz

24 Attorneys for Defendant Facebook, Inc.
25
26
27
28

1 **PROOF OF SERVICE BY MAIL**

2 I, Marla J. Heap, am a citizen of the United States and employed in Santa Clara County,
3 California. I am over the age of eighteen years and not a party to the within-entitled action. My
4 business address is 3150 Porter Drive, Palo Alto, California 94304-1212. I am readily familiar
5 with this firm's practice for collection and processing of correspondence for mailing with the
6 United States Postal Service. On August 25, 2016, I placed with this firm at the above address for
7 deposit with the United States Postal Service a true and correct copy of the within document(s):

8 **DEFENDANT FACEBOOK, INC.'S SECOND SUPPLEMENTAL OBJECTIONS AND**
9 **RESPONSES TO PLAINTIFF SIX4THREE, LLC'S FIRST SET OF DEMANDS FOR**
10 **INSPECTION OF DOCUMENTS**

11 in a sealed envelope, postage fully paid, addressed as follows:

12 Basil P. Fthenakis, Esq.
13 CRITERION LAW
2225 E. Bayshore Road, Suite 200
14 Palo Alto, California 94303
Telephone: 650.352.8400
15 Facsimile: 650.352.8408
bpf@criterionlaw.com

Of counsel:
David S. Godkin
BIRNBAUM & GODKIN, LLP
280 Summer Street, Suite 500
Boston, MA 02210
Telephone: 617.307.6100
godkin@birnbaumgodkin.com

16
17 Following ordinary business practices, the envelope was sealed and placed for collection
18 and mailing on this date, and would, in the ordinary course of business, be deposited with the
19 United States Postal Service on this date.

20 I declare under penalty of perjury under the laws of the State of California that the above
21 is true and correct.

22 Executed August 25, 2016, at Palo Alto, California.

23 

24 _____
25 Marla J. Heap
26
27
28

1 Julie E. Schwartz, Bar No. 260624
JSchwartz@perkinscoie.com
2 PERKINS COIE LLP
3150 Porter Drive
3 Palo Alto, CA 94304-1212
Telephone: 650.838.4300
4 Facsimile: 650.838.4350

5 James R. McCullagh, admitted *pro hac vice*
JMcCullagh@perkinscoie.com
6 PERKINS COIE LLP
1201 Third Avenue, Suite 4900
7 Seattle, WA 98101-3099
Telephone: 206.359.8000
8 Facsimile: 206.359.9000

9 Attorneys for Defendant
Facebook, Inc.

FILED
SAN MATEO COUNTY

OCT 25 2016

Clerk of the Superior Court

By

DEPUTY CLERK

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12 **COUNTY OF SAN MATEO**

14 SIX4THREE, LLC, a Delaware limited
liability company,

15
16 Plaintiff,

17 v.

18 FACEBOOK, INC., a Delaware
corporation and DOES 1-50, inclusive,

19 Defendant.
20

Case No. CIV533328

**STIPULATED [PROPOSED]
PROTECTIVE ORDER**

21 In order to protect confidential information obtained by the parties in connection with this
22 case, the parties, by and through their respective undersigned counsel and subject to the approval
23 of the Court, hereby agree as follows:

24 **Part One: Use Of Confidential Materials In Discovery**

25 1. Any party or non-party may designate as Confidential Information (by stamping
26 the relevant page or as otherwise set forth herein) any document or response to discovery which
27 that party or non-party considers in good faith to contain information involving trade secrets, or
28

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Order
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-1-

STIPULATED [PROPOSED] PROTECTIVE ORDER
CASE NO. CIV533328

BG000579

1 confidential business, financial, or personal information, including personal financial information
2 about any individual or entity; information regarding any individual's or entity's banking
3 relationship with any banking institution, including information regarding financial transactions
4 or financial accounts, and any information regarding any individual or entity that is not otherwise
5 available to the public, subject to protection under Rules 2.550, 2.551, 2.580, 2.585, 8.160, and
6 8.490 of the California Rules of Court or under other provisions of California law. Any party or
7 non-party may designate as Highly Confidential Information (by stamping the relevant page or as
8 otherwise set forth herein) any document or response to discovery which that party or non-party
9 considers in good faith to contain information involving highly sensitive trade secrets or
10 confidential business, financial, or personal information, the disclosure of which would result in
11 the disclosure of trade secrets or other highly sensitive research, development, production,
12 personnel, commercial, market, financial, or business information, or highly sensitive personal
13 information, subject to protection under Rules 2.550, 2.551, 2.580, 2.585, 8.160, and 8.490 of the
14 California Rules of Court or under other provisions of California law. Where a document or
15 response consists of more than one page, the first page and each page on which confidential
16 information appears shall be so designated.

17 2. A party or non-party may designate information disclosed during a deposition or in
18 response to written discovery as Confidential Information or Highly Confidential Information by
19 so indicating in said responses or on the record at the deposition and requesting the preparation of
20 a separate transcript of such material. In addition, a party or non-party may designate in writing,
21 within thirty (30) days after receipt of said responses or of the deposition transcript for which the
22 designation is proposed, that specific pages of the transcript and/or specific responses be treated
23 as Confidential Information or Highly Confidential Information. Any other party may object to
24 such proposal, in writing or on the record. Upon such objection, the parties shall follow the
25 procedures described in Paragraph 9 below. Until the thirty (30) day period for designation has
26 lapsed, the entirety of each deposition transcript shall be treated as Confidential Information.
27 After the thirty (30) day period for designation has lapsed, any documents or information
28 designated pursuant to the procedure set forth in this paragraph shall be treated according to the

1 designation until the matter is resolved according to the procedures described in Paragraph 9
2 below, and counsel for all parties shall be responsible for marking all previously unmarked copies
3 of the designated material in their possession or control with the specified designation. A party
4 that makes original documents or materials available for inspection need not designate them as
5 Confidential Information or Highly Confidential Information until after the inspecting party has
6 indicated which materials it would like copied and produced. During the inspection and before the
7 designation and copying, all of the material made available for inspection shall be considered
8 Highly Confidential Information.

9 3. All Confidential Information or Highly Confidential Information produced or
10 exchanged in the course of this case (not including information that is publicly available) shall be
11 used by the party or parties to whom the information is produced solely for the purpose of this
12 case. Confidential Information or Highly Confidential Information shall not be used for any
13 commercial competitive, personal, or other purpose. Confidential Information or Highly
14 Confidential Information must be stored and maintained by a receiving party at a location and in a
15 secure manner that ensures that access is limited to the persons authorized under this Stipulated
16 Protective Order. The protections conferred by this Stipulated Protective Order cover not only
17 the Confidential Information or Highly Confidential Information produced or exchanged in this
18 case, but also (1) any information copied or extracted from or reflecting the Confidential
19 Information or Highly Confidential Information; (2) all copies, excerpts, summaries, or
20 compilations of Confidential Information or Highly Confidential Information; and (3) any
21 testimony, conversations, or presentations by parties or their counsel that might reveal
22 Confidential Information or Highly Confidential Information. However, the protections
23 conferred by this Stipulated Protective Order do not cover the following information: (a) any
24 information that is in the public domain at the time of disclosure to a receiving party or becomes
25 part of the public domain after its disclosure to a receiving party as a result of publication not
26 involving a violation of this Stipulated Protective Order, including becoming part of the public
27 record through trial or otherwise; and (b) any information known to the receiving party prior to
28

1 the disclosure or obtained by the receiving party after the disclosure from a source who obtained
2 the information lawfully and under no obligation of confidentiality to the designating party.

3 4. Except with the prior written consent of the other parties, or upon prior order of
4 this Court obtained upon notice to opposing counsel, Confidential Information shall not be
5 disclosed to any person other than:

- 6 (a) counsel for the respective parties to this litigation, including in-house
7 counsel and co-counsel retained for this litigation;
- 8 (b) employees of such counsel;
- 9 (c) individual parties or officers or employees of a party, to the extent deemed
10 necessary by counsel for the prosecution or defense of this litigation;
- 11 (d) consultants or expert witnesses retained for the prosecution or defense of
12 this litigation, provided that each such person shall execute a copy of the
13 Certification annexed to this Order (which shall be retained by counsel to
14 the party so disclosing the Confidential Information and made available
15 for inspection by opposing counsel during the pendency or after the
16 termination of the action only upon good cause shown and upon order of
17 the Court) before being shown or given any Confidential Information, and
18 provided that if the party chooses a consultant or expert employed by the
19 opposing party or one of its competitors, the party shall notify the
20 opposing party, or designating non-party, before disclosing any
21 Confidential Information to that individual and shall give the opposing
22 party an opportunity to move for a protective order preventing or limiting
23 such disclosure;
- 24 (e) any authors or recipients of the Confidential Information or a custodian;
- 25 (f) the Court, court personnel, and court reporters; and
- 26 (g) witnesses (other than persons described in Paragraph 4(e)). A witness shall
27 sign the Certification before being shown a confidential document.
28 Confidential Information may be disclosed to a witness who will not sign

1 the Certification only in a deposition at which the party who designated
2 the Confidential Information is represented or has been given notice that
3 Confidential Information produced by the party may be used. At the
4 request of any party, the portion of the deposition transcript involving the
5 Confidential Information shall be designated "Confidential" pursuant to
6 Paragraph 2 above. Witnesses shown Confidential Information shall not be
7 allowed to retain copies.

8 5. Except with the prior written consent of the other parties, or upon prior order of
9 this Court obtained after notice to opposing counsel, Highly Confidential Information shall be
10 treated in the same manner as Confidential Information pursuant to Paragraph 4 above, except
11 that it shall not be disclosed to individual parties or directors, officers or employees of a party, or
12 to witnesses (other than persons described in Paragraph 4(a) or 4(e)).

13 6. Any persons receiving Confidential Information or Highly Confidential
14 Information shall not reveal or discuss such information to or with any person who is not entitled
15 to receive such information, except as set forth herein. If a party or any of its representatives,
16 including counsel, inadvertently discloses any Confidential Information or Highly Confidential
17 Information to persons who are not authorized to use or possess such material, the party shall
18 provide immediate written notice of the disclosure to the party whose material was inadvertently
19 disclosed. If a party has actual knowledge that Confidential Information or Highly Confidential
20 Information is being used or possessed by a person not authorized to use or possess that material,
21 regardless of how the material was disclosed or obtained by such person, the party shall provide
22 immediate written notice of the unauthorized use or possession to the party whose material is
23 being used or possessed. No party shall have an affirmative obligation to inform itself regarding
24 such possible use or possession.

25 7. In connection with discovery proceedings as to which a party submits Confidential
26 Information or Highly Confidential Information, all documents and chamber copies containing
27 Confidential Information or Highly Confidential Information which are submitted to the Court
28 shall be filed with the Court in sealed envelopes or other appropriate sealed containers. On the

1 outside of the envelopes, a copy of the first page of the document shall be attached. If
2 Confidential Information or Highly Confidential Information is included in the first page attached
3 to the outside of the envelopes, it may be deleted from the outside copy. The word
4 "CONFIDENTIAL" shall be stamped on the envelope and a statement substantially in the
5 following form shall also be printed on the envelope:

6 "This envelope is sealed pursuant to Order of the Court, contains Confidential
7 Information and is not to be opened or the contents revealed, except by Order of the
8 Court or agreement by the parties."

9 8. A party may designate as Confidential Information or Highly Confidential
10 Information documents or discovery materials produced by a non-party by providing written
11 notice to all parties of the relevant document numbers or other identification within thirty (30)
12 days after receiving such documents or discovery materials. Until the thirty (30) day period for
13 designation has lapsed, any documents or discovery materials produced by a non-party shall be
14 treated at Confidential Information. Any party or non-party may voluntarily disclose to others
15 without restriction any information designated by that party or nonparty as Confidential
16 Information or Highly Confidential Information, although a document may lose its confidential
17 status if it is made public. If a party produces materials designated Confidential Information or
18 Highly Confidential Information in compliance with this Order, that production shall be deemed
19 to have been made consistent with any confidentiality or privacy requirements mandated by local,
20 state or federal laws.

21 9. If a party contends that any material is not entitled to confidential treatment, such
22 party may at any time give written notice to the party or non-party who designated the material.
23 The party or non-party who designated the material shall have twenty (20) days from the receipt
24 of such written notice to apply to the Court for an order designating the material as confidential.
25 The party or non-party seeking the order has the burden of establishing that the document is
26 entitled to protection.
27
28

1 10. Notwithstanding any challenge to the designation of material as Confidential
2 Information or Highly Confidential Information, all documents shall be treated as such and shall
3 be subject to the provisions hereof unless and until one of the following occurs:

4 (a) the party or non-party who claims that the material is Confidential
5 Information or Highly Confidential Information withdraws such
6 designation in writing; or

7 (b) the party or non-party who claims that the material is Confidential
8 Information or Highly Confidential Information fails to apply to the Court
9 for an order designating the material confidential within the time period
10 specified above after receipt of a written challenge to such designation; or

11 (c) the Court rules the material is not Confidential Information or Highly
12 Confidential Information.

13 11. All provisions of this Order restricting the communication or use of Confidential
14 Information or Highly Confidential Information shall continue to be binding after the conclusion
15 of this action, unless otherwise agreed or ordered. Upon conclusion of the litigation, a party in the
16 possession of Confidential Information or Highly Confidential Information shall within sixty (60)
17 days either (a) return such documents to counsel for the party or non-party who provided such
18 information, or (b) destroy such documents. Whether the Confidential Information or Highly
19 Confidential Information is returned or destroyed, the receiving party must submit a written
20 certification to the producing party (and, if not the same person or entity, to the designating party)
21 by the 60 day deadline that (1) all the Confidential Information or Highly Confidential
22 Information that was returned or destroyed, and (2) affirms that the receiving party has not
23 retained any copies, abstracts, compilations, summaries or any other format reproducing or
24 capturing any of the Confidential Information or Highly Confidential Information.

25 Notwithstanding this provision, counsel are entitled to retain an archival copy of all pleadings,
26 motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence,
27 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert
28 work product, even if such materials contain Confidential Information or Highly Confidential

1 Information. Any such archival copies that contain or constitute Confidential Information or
2 Highly Confidential Information remain subject to this Stipulated Protective Order. The
3 conclusion of the litigation shall be deemed to be the later of (1) dismissal of all claims and
4 defenses in this action, with or without prejudice; and (2) final judgment herein after the
5 completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
6 including the time limits for filing any motions or applications for extension of time pursuant to
7 applicable law. After the conclusion of this action, this Court will retain jurisdiction to enforce
8 the terms of this Order.

9 12. Nothing herein shall be deemed to waive any applicable privilege or work product
10 protection, or to affect the ability of a party to seek relief for an inadvertent disclosure of material
11 protected by privilege or work product protection. Any witness or other person, firm or entity
12 from which discovery is sought may be informed of and may obtain the protection of this Order
13 by written advice to the parties' respective counsel or by oral advice at the time of any deposition
14 or similar proceeding.

15 13. In the event that any Confidential Information or Highly Confidential Information
16 is inadvertently produced without such designation, the party or non-party that inadvertently
17 produced the information without designation shall give written notice of such inadvertent
18 production promptly after the party or non-party discovers the inadvertent failure to designate
19 (but no later than fourteen (14) calendar days after the party or non-party discovers the
20 inadvertent failure to designate), together with a further copy of the subject information
21 designated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" (the "Inadvertent Production
22 Notice"). Upon receipt of such Inadvertent Production Notice, the party that received the
23 information that was inadvertently produced without designation shall promptly destroy the
24 inadvertently produced information and all copies thereof, or, at the expense of the producing
25 party or non-party, return such together with all copies of such information to counsel for the
26 producing party and shall retain only the newly-produced versions of that information that are
27 designated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL." This provision is not
28 intended to apply to any inadvertent production of any information or materials protected by

1 attorney-client or work product privileges, which inadvertent production is governed by Section
2 14 below.

3 14. In the event that any party or non-party inadvertently produces information that is
4 privileged or otherwise protected from disclosure during the discovery process ("Inadvertent
5 Production Material"), the following shall apply:

6 (a) Such inadvertent production or disclosure shall in no way prejudice or
7 otherwise constitute a waiver of, or estoppel as to, any claim of attorney-client privilege, attorney
8 work product protection, or other applicable protection in this case or any other federal or state
9 proceeding, provided that the producing party shall notify the receiving party in writing of such
10 protection or privilege promptly after the producing party discovers such materials have been
11 inadvertently produced.

12 (b) If a claim of inadvertent production is made, pursuant to this Stipulated
13 Protective Order, with respect to discovery material then in the custody of another party, that
14 party shall: (i) refrain from any further examination or disclosure of the claimed Inadvertent
15 Production Material; (ii) promptly make a good-faith effort to return the claimed Inadvertent
16 Production Material and all copies thereof (including summaries and excerpts) to counsel for the
17 producing party, or destroy all such claimed Inadvertent Production Material (including
18 summaries and excerpts) and certify in writing to that fact; and (iii) not disclose or use the
19 claimed Inadvertent Production Material for any purpose until further order of the Court expressly
20 authorizing such use.

21 (c) A party may move the Court for an order compelling production of the
22 Inadvertent Production Material on the ground that it is not, in fact, privileged or protected. The
23 motion shall be filed under seal and shall not assert as a ground for entering such an order the fact
24 or circumstance of the inadvertent production. The producing party retains the burden of
25 establishing the privileged or protected nature of any inadvertently disclosed or produced
26 information. While such a motion is pending, the Inadvertent Production Material at issue shall
27 be treated in accordance with Paragraph 14(b) above.
28

1 (d) If a party, in reviewing discovery material it has received from any other
2 party or any non-party, finds anything the reviewing party believes in good faith may be
3 Inadvertent Production Material, the reviewing party shall: (i) refrain from any further
4 examination or disclosure of the potentially Inadvertent Production Material; (ii) promptly
5 identify the material in question to the producing party (by document number or other equally
6 precise description); and (iii) give the producing party seven (7) days to respond as to whether the
7 producing party will make a claim of inadvertent production. If the producing party makes such a
8 claim, the provisions of Paragraphs 14(a)-(c) above shall apply.

9 15. The parties agree that should the production of source code become necessary,
10 they will need to amend or supplement the terms of this Order. To the extent production of
11 source code becomes necessary in this case, the parties will work expeditiously to propose
12 amendments to this Order to cover any production of source code.

13 16. If a party is served with a subpoena or a court order issued in other litigation that
14 compels disclosure of any Confidential Information or Highly Confidential Information, the
15 receiving party must:

16 (a) promptly notify in writing the designating party. Such notification shall
17 include a copy of the subpoena or court order;

18 (b) promptly notify in writing the party who caused the subpoena or order to
19 issue in the other litigation that some or all of the material covered by the subpoena or order is
20 subject to this Stipulated Protective Order. Such notification shall include a copy of this
21 Stipulated Protective Order; and

22 (c) cooperate with respect to all reasonable procedures sought to be pursued by
23 the designating party whose Confidential Information or Highly Confidential Information may be
24 affected.

25 If the designating party timely seeks a protective order, the party served with the subpoena
26 or court order shall not produce any Confidential Information or Highly Confidential Information
27 before a determination by the court from which the subpoena or order issued, unless the party has
28 obtained the designating party's permission. The designating party shall bear the burden and

1 expense of seeking protection in that court of its confidential material—and nothing in these
2 provisions should be construed as authorizing or encouraging a receiving party in this action to
3 disobey a lawful directive from another court.

4 17. The following additional terms apply to non-party discovery material:

5 (a) The terms of this Order are applicable to information produced by a non-
6 party in this action and designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL.”
7 Such information produced by non-parties in connection with this litigation is protected by the
8 remedies and relief provided by this Order. Nothing in these provisions should be construed as
9 prohibiting a non-party from seeking additional protections.

10 (b) In the event that a party is required, by a valid discovery request, to
11 produce a non-party’s confidential information in its possession, and the party is subject to an
12 agreement with the non-party not to produce the non-party’s confidential information, then the
13 party shall:

14 i. promptly notify in writing the requesting party and the non-party
15 that some or all of the information requested is subject to a confidentiality agreement with a non-
16 party;

17 ii. promptly provide the non-party with a copy of the Stipulated
18 Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific
19 description of the information requested; and

20 iii. make the information requested available for inspection by the non-
21 party.

22 (c) If the non-party fails to object or seek a protective order from this Court
23 within 28 days of receiving the notice and accompanying information, the receiving party may
24 produce the non-party’s confidential information responsive to the discovery request. If the non-
25 party timely seeks a protective order, the receiving party shall not produce any information in its
26 possession or control that is subject to the confidentiality agreement with the non-party before a
27 determination by the Court. Absent a court order to the contrary, the non-party shall bear the
28

1 burden and expense of seeking protection in this Court of its Confidential Information or Highly
2 Confidential Information.

3 18. Nothing in this Stipulated Protective Order shall be construed to preclude any
4 party from asserting in good faith that certain Confidential Information or Highly Confidential
5 Information requires additional protections. The parties shall meet and confer to agree upon the
6 terms of such additional protection. By stipulating to the entry of this Protective Order no party
7 waives any right it otherwise would have to object to disclosing or producing any information or
8 item on any ground not addressed in this Stipulated Protective Order. Similarly, no party waives
9 any right to object on any ground to use in evidence of any of the material covered by this
10 Stipulated Protective Order. Nothing in this Stipulated Protective Order abridges the right of any
11 person to seek its modification by the Court in the future.

12 **Part Two: Use of Confidential Materials in Court**

13 The following provisions govern the treatment of Confidential Information or Highly
14 Confidential Information used at trial or submitted as a basis for adjudication of matters other
15 than discovery motions or proceedings. These provisions are subject to Rules 2.550, 2.551, 2.580,
16 2.585, 8.160, and 8.490 of the California Rules of Court and must be construed in light of those
17 Rules.

18 19. A party that files with the Court, or seeks to use at trial, materials designated as
19 Confidential Information or Highly Confidential Information, and who seeks to have the record
20 containing such information sealed, shall submit to the Court a motion or an application to seal,
21 pursuant to California Rule of Court 2.551.

22 20. A party that files with the Court, or seeks to use at trial, materials designated as
23 Confidential Information or Highly Confidential Information by anyone other than itself, and who
24 does not seek to have the record containing such information sealed, shall comply with either of
25 the following requirements:

- 26 (a) At least ten (10) business days prior to the filing or use of the Confidential
27 Information or Highly Confidential Information, the submitting party shall
28 give notice to all other parties, and to any non-party that designated the

1 materials as Confidential Information or Highly Confidential Information
2 pursuant to this Order, of the submitting party's intention to file or use the
3 Confidential Information or Highly Confidential Information, including
4 specific identification of the Confidential Information or Highly
5 Confidential Information. Any affected party or non-party may then file a
6 motion to seal, pursuant to California Rule of Court 2.551(b); or

7 (b) At the time of filing or desiring to use the Confidential Information or
8 Highly Confidential Information, the submitting party shall submit the
9 materials pursuant to the lodging-under-seal provision of California Rule of
10 Court 2.551(d). Any affected party or non-party may then file a motion to
11 seal, pursuant to the California Rule of Court 2.551(b), within ten (10)
12 business days after such lodging. Documents lodged pursuant to California
13 Rule of Court 2.551(d) shall bear a legend stating that such materials shall
14 be unsealed upon expiration of ten (10) business days, absent the filing of a
15 motion to seal pursuant to Rule 2.551(b) or Court order.

16 21. In connection with a request to have materials sealed pursuant to Paragraph 12 or
17 Paragraph 13, the requesting party's declaration pursuant to California Rule of Court 2.551(b)(1)
18 shall contain sufficient particularity with respect to the particular Confidential Information or
19 Highly Confidential Information and the basis for sealing to enable the Court to make the findings
20 required by California Rule of Court 2.550(d).

21 **IT IS SO STIPULATED.**

22
23 DATED: _____, 2016

24 **PERKINS COIE LLP**

25 By: _____
26 Julie E. Schwartz

27 *Attorneys for Defendant*
28 *Facebook, Inc.*

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DATED: _____, 2016

BIRNBAUM & GODKIN, LLP

By: _____
David Godkin

Attorneys for Plaintiff
SIX4THREE, LLC

IT IS SO ORDERED.

DATED: 10/24, 2016


JUDGE OF THE SUPERIOR COURT

CERTIFICATION

I hereby certify my understanding that Confidential Information or Highly Confidential Information is being provided to me pursuant to the terms and restrictions of the Stipulation and Protective Order Regarding Confidential Information filed on _____, 2016, in *Six4Three, LLC v. Facebook, Inc.*, San Mateo County Superior Court Case No. CIV533328 ("Order"). I have been given a copy of that Order and read it.

I agree to be bound by the Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I will not reveal the Confidential Information or Highly Confidential Information to anyone, except as allowed by the Order. I will maintain all such Confidential Information or Highly Confidential Information, including copies, notes, or other transcriptions made therefrom, in a secure manner to prevent unauthorized access to it. No later than thirty (30) days after the conclusion of this action, I will return the Confidential Information or Highly Confidential Information, including copies, notes, or other transcriptions made therefrom, to the counsel who provided me with the Confidential Information or Highly Confidential Information. I hereby consent to the jurisdiction of the San Mateo County Superior Court for the purpose of enforcing the Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ located at the address of _____ as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

I declare under penalty of perjury that the foregoing is true and correct and that this certificate is executed this ____ day of _____, 2016, at _____.

By: _____

Address: _____

Phone: _____

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Attorneys for Defendant
Facebook, Inc.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN MATEO

SIX4THREE, LLC, a Delaware limited liability
company,

Plaintiff,

v.

FACEBOOK, INC., a Delaware corporation and
DOES 1-50, inclusive,

Defendant.

Case No. CIV 533328

**Assigned for all purposes to Hon. Marie S.
Weiner, Dept. 2**

**DEFENDANT FACEBOOK, INC.'S
SUPPLEMENTAL RESPONSES AND
OBJECTIONS TO PLAINTIFF SIX4THREE,
LLC'S THIRD SET OF DEMANDS FOR
INSPECTION OF DOCUMENTS**

FILING DATE: April 10, 2015
TRIAL DATE: Vacated

1 **PROPOUNDING PARTY: PLAINTIFF SIX4THREE, LLC**

2 **RESPONDING PARTY: DEFENDANT FACEBOOK, INC.**

3 **SET NO.: THREE**

4 Defendant Facebook, Inc. ("Facebook") hereby objects and responds as follows to the Third Set
5 of Demands for Inspection of Documents ("Requests for Production") propounded by Plaintiff
6 Six4Three, LLC ("Plaintiff").

7 **GENERAL OBJECTIONS AND LIMITATIONS**

8 Each and every Request for Production ("Request") is subject to the General Objections and
9 Limitations set forth herein ("General Objections"), in addition to the specific objections and limitations
10 set forth in the respective responses. The General Objections and Limitations form part of the response
11 to each Request for Production and are set forth to avoid duplication for each response. Facebook makes
12 the following General Objections to each Request for Production:

13 1. Facebook objects to the Requests for Production to the extent they seek the content of
14 communications of Facebook users on the grounds that the federal Stored Communications Act, 18
15 U.S.C. §§ 2701, *et seq.*, ("SCA") prohibits service providers such as Facebook from disclosing the
16 contents of electronic communications in electronic storage or that are carried or maintained on a remote
17 computing service.

18 2. Facebook objects to the Requests for Production to the extent they seek records and
19 information subject to the SCA, pertaining to users of Facebook's services, who should be provided with
20 notice and an opportunity to object prior to the disclosure of any reasonably available basic subscriber
21 information.

22 3. Facebook objects to the Requests for Production to the extent that they seek documents
23 that Facebook is legally or contractually prohibited from disclosing, including documents that would
24 require Facebook to breach a confidentiality contract, protective order, settlement, or other duty to a third
25 party to maintain confidentiality.

26 4. Facebook objects to the Requests for Production to the extent they are unduly burdensome
27 and oppressive in the context of this action.

28 ///

1 5. Facebook objects to the Requests for Production to the extent they call for the production
2 of documents protected by the attorney-client privilege, the settlement privilege, the work-product
3 doctrine, or any other applicable privilege. Such documents will not be provided in response to the
4 Requests for Production, and any inadvertent production thereof shall not be deemed a waiver of any
5 privilege with respect to such documents, or of any work-product doctrine protections attaching to such
6 documents.

7 6. Facebook objects to the Requests for Production to the extent they seek documents and
8 things not within the possession, custody, or control of Facebook. An objection on this ground does not
9 constitute a representation or admission that such documents do in fact exist.

10 7. Facebook objects to the Requests for Production to the extent they seek documents
11 already in Plaintiff's possession, custody, or control.

12 8. Facebook objects to the Requests for Production, the instructions, and the definitions to
13 the extent they seek to impose obligations upon it beyond those required or permitted by the California
14 Code of Civil Procedure.

15 9. Facebook objects to the definitions of "DOCUMENTS" and "COMMUNICATIONS" to
16 the extent they impose any obligations with respect to the production of electronically stored information
17 that are different from or in addition to those imposed by the California Code of Civil Procedure.
18 Facebook further objects to these definitions to the extent that they include electronically stored
19 information that is (1) not reasonably accessible by Facebook because of undue burden or expense; (2)
20 obtainable from another source that is less burdensome, expensive or more convenient; and/or (3)
21 unreasonably cumulative or duplicative, or where the likely burden or expense of producing the
22 electronically stored information outweighs the likely benefit.

23 10. Facebook objects to the definitions of "FACEBOOK," "DEFENDANT," "YOU," and
24 "YOUR" on the grounds that they are overbroad and call for information covered by the attorney-client
25 and work product privileges.

26 11. All of the following responses are based solely upon such information that is presently
27 available and specifically known to Facebook. Thus, Facebook's responses are made without prejudice
28 to Facebook's right subsequently to add, modify, or otherwise change or amend these responses.

1 Accordingly, Facebook reserves the right to change any of its objections and/or responses to the Requests
2 for Production as new information is discovered. Furthermore, Facebook specifically reserves the right
3 to:

- 4 a. introduce other information, documents, and things in this action that it may discover or
5 upon which it may come to rely;
- 6 b. use documents or things that it may later determine to have been responsive to the
7 Requests; and
- 8 c. revise, correct, supplement, or clarify any of its written responses at any time.

9 The foregoing General Objections are hereby incorporated into each and every objection/response
10 below. Subject to, preserving, and without waiving, the General Objections, Facebook responds as
11 follows:

12 **SPECIFIC OBJECTIONS AND RESPONSES TO REQUESTS FOR PRODUCTION**
13 **REQUEST FOR PRODUCTION NO. 91:**

14 All DOCUMENTS AND COMMUNICATIONS to and/or from Mark Zuckerberg concerning
15 Facebook's data reciprocity policy, including all documents that refer to "data reciprocity" or
16 "reciprocity" (as those terms are used, for example, in FB-00235810 and FB-00423236), from June 1,
17 2012 to April 30, 2014.

18 **RESPONSE TO REQUEST FOR PRODUCTION NO. 91:**

19 Facebook incorporates each of the General Objections as if they were stated in full and further
20 objects to this Request as overly broad and unduly burdensome in seeking "All DOCUMENTS AND
21 COMMUNICATIONS . . . concerning Facebook's data reciprocity policy" or that use the word
22 "reciprocity" over a period of nearly two years. Facebook further objects to this Request to the extent
23 that it calls for information covered by the attorney-client and work-product privileges. Facebook further
24 objects to this Request as seeking documents that are not relevant to the subject matter of this litigation
25 and not reasonably calculated to lead to the discovery of admissible evidence. Facebook further objects
26 to this Request as improperly seeking to expand the number of document custodians to Facebook's CEO,
27 because Facebook denies he had a specific role in the decision to open Graph API beyond the decision-
28 making authority inherent in his role as CEO. Facebook further objects to this Request as vague and

1 ambiguous, particularly as to the term “Facebook’s data reciprocity policy.” Facebook further objects to
2 this Request as improperly seeking to prescribe search terms / parameters on Facebook.

3 Subject to and without waiving the foregoing objections, Facebook states that it does not have a
4 “data reciprocity policy,” and so no such documents and communications exist.

5 **FIRST SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION NO. 91:**

6 Facebook incorporates each of the General Objections as if they were stated in full and further
7 objects to this Request as overly broad and unduly burdensome in seeking “All DOCUMENTS AND
8 COMMUNICATIONS . . . concerning Facebook’s data reciprocity policy” or that use the word
9 “reciprocity” over a period of nearly two years. Facebook further objects to this Request to the extent
10 that it calls for information covered by the attorney-client and work-product privileges. Facebook further
11 objects to this Request as seeking documents that are not relevant to the subject matter of this litigation
12 and not reasonably calculated to lead to the discovery of admissible evidence. Facebook further objects
13 to this Request as improperly seeking to expand the number of document custodians to Facebook’s CEO,
14 because Facebook denies he had a specific role in the decision to open Graph API beyond the decision-
15 making authority inherent in his role as CEO. Facebook further objects to this Request as vague and
16 ambiguous, particularly as to the term “Facebook’s data reciprocity policy.” For the purposes of this
17 Response, Facebook understands the term “Facebook’s data reciprocity policy” to refer to an alleged
18 policy whereby Facebook offered unspecified “unfair competitive advantages” and/or “special access” to
19 data in exchange for “unrelated advertising purchases” or unspecified “other valuable consideration.”
20 See TAC ¶¶ 2, 7, & 145. Facebook further objects to this Request as improperly seeking to prescribe
21 search terms / parameters on Facebook.

22 Subject to and without waiving the foregoing objections, and subject to the foregoing clarification
23 regarding Facebook’s understanding of the term “Facebook’s data reciprocity policy,” Facebook states
24 that it does not have a “data reciprocity policy,” and so no such documents and communications exist.

25 **REQUEST FOR PRODUCTION NO. 92:**

26 All DOCUMENTS AND COMMUNICATIONS to and/or from Christopher Cox concerning
27 Facebook’s data reciprocity policy, including all documents that refer to “data reciprocity” or
28

1 “reciprocity” (as those terms are used, for example, in FB-00235810 and FB-00423236), from June 1,
2 2012 to April 30, 2014.

3 **RESPONSE TO REQUEST FOR PRODUCTION NO. 92:**

4 Facebook incorporates each of the General Objections as if they were stated in full and further
5 objects to this Request as overly broad and unduly burdensome in seeking “All DOCUMENTS AND
6 COMMUNICATIONS . . . concerning Facebook’s data reciprocity policy” or that use the word
7 “reciprocity” over a period of nearly two years. Facebook further objects to this Request to the extent
8 that it calls for information covered by the attorney-client and work-product privileges. Facebook further
9 objects to this Request as seeking documents that are not relevant to the subject matter of this litigation
10 and not reasonably calculated to lead to the discovery of admissible evidence. Facebook further objects
11 to this Request as improperly seeking to expand the number of document custodians to Facebook’s Chief
12 Product Officer, because Facebook denies he had a specific role in the decision to open Graph API
13 beyond the decision-making authority inherent in his role as CPO. Facebook further objects to this
14 Request as vague and ambiguous, particularly as to the term “Facebook’s data reciprocity policy.”
15 Facebook further objects to this Request as improperly seeking to prescribe search terms / parameters on
16 Facebook.

17 Subject to and without waiving the foregoing objections, Facebook states that it does not have a
18 “data reciprocity policy,” and so no such documents and communications exist.

19 **FIRST SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION NO. 92:**

20 Facebook incorporates each of the General Objections as if they were stated in full and further
21 objects to this Request as overly broad and unduly burdensome in seeking “All DOCUMENTS AND
22 COMMUNICATIONS . . . concerning Facebook’s data reciprocity policy” or that use the word
23 “reciprocity” over a period of nearly two years. Facebook further objects to this Request to the extent
24 that it calls for information covered by the attorney-client and work-product privileges. Facebook further
25 objects to this Request as seeking documents that are not relevant to the subject matter of this litigation
26 and not reasonably calculated to lead to the discovery of admissible evidence. Facebook further objects
27 to this Request as improperly seeking to expand the number of document custodians to Facebook’s Chief
28 Product Officer, because Facebook denies he had a specific role in the decision to open Graph API

beyond the decision-making authority inherent in his role as CPO. Facebook further objects to this Request as vague and ambiguous, particularly as to the term “Facebook’s data reciprocity policy.” For the purposes of this Response, Facebook understands the term “Facebook’s data reciprocity policy” to refer to an alleged policy whereby Facebook offered unspecified “unfair competitive advantages” and/or “special access” to data in exchange for “unrelated advertising purchases” or unspecified “other valuable consideration.” See TAC ¶¶ 2, 7, & 145. Facebook further objects to this Request as improperly seeking to prescribe search terms / parameters on Facebook.

Subject to and without waiving the foregoing objections, and subject to the foregoing clarification regarding Facebook’s understanding of the term “Facebook’s data reciprocity policy,” Facebook states that it does not have a “data reciprocity policy,” and so no such documents and communications exist.

REQUEST FOR PRODUCTION NO. 93:

All DOCUMENTS AND COMMUNICATIONS to and/or from Samuel Lessin concerning Facebook’s data reciprocity policy, including all documents that refer to “data reciprocity” or “reciprocity” (as those terms are used, for example, in FB-00235810 and FB-00423236), from June 1, 2012 to April 30, 2014.

RESPONSE TO REQUEST FOR PRODUCTION NO. 93:

Facebook incorporates each of the General Objections as if they were stated in full and further objects to this Request as overly broad and unduly burdensome in seeking “All DOCUMENTS AND COMMUNICATIONS . . . concerning Facebook’s data reciprocity policy” or that use the word “reciprocity” over a period of nearly two years. Facebook further objects to this Request to the extent that it calls for information covered by the attorney-client and work-product privileges. Facebook further objects to this Request as seeking documents that are not relevant to the subject matter of this litigation and not reasonably calculated to lead to the discovery of admissible evidence. Facebook further objects to this Request as improperly seeking to expand the number of document custodians to Facebook’s Vice President of Product Management, because Facebook denies he had a specific role in the decision to open Graph API beyond the decision-making authority inherent in his role as Vice President of Product Management. Facebook further objects to this Request as vague and ambiguous, particularly as to the

1 term “Facebook’s data reciprocity policy.” Facebook further objects to this Request as improperly
2 seeking to prescribe search terms / parameters on Facebook.

3 Subject to and without waiving the foregoing objections, Facebook states that it does not have a
4 “data reciprocity policy.” Facebook nonetheless has searched Samuel Lessin’s documents for the period
5 from September 1, 2011 through April 30, 2015, using the search term “data w/7 reciproc!” and will
6 produce non-privileged responsive documents that hit on that search term.

7 **FIRST SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION NO. 93:**

8 Facebook incorporates each of the General Objections as if they were stated in full and further
9 objects to this Request as overly broad and unduly burdensome in seeking “All DOCUMENTS AND
10 COMMUNICATIONS . . . concerning Facebook’s data reciprocity policy” or that use the word
11 “reciprocity” over a period of nearly two years. Facebook further objects to this Request to the extent
12 that it calls for information covered by the attorney-client and work-product privileges. Facebook further
13 objects to this Request as seeking documents that are not relevant to the subject matter of this litigation
14 and not reasonably calculated to lead to the discovery of admissible evidence. Facebook further objects
15 to this Request as improperly seeking to expand the number of document custodians to Facebook’s Vice
16 President of Product Management, because Facebook denies he had a specific role in the decision to open
17 Graph API beyond the decision-making authority inherent in his role as Vice President of Product
18 Management. Facebook further objects to this Request as vague and ambiguous, particularly as to the
19 term “Facebook’s data reciprocity policy.” For the purposes of this Response, Facebook understands the
20 term “Facebook’s data reciprocity policy” to refer to an alleged policy whereby Facebook offered
21 unspecified “unfair competitive advantages” and/or “special access” to data in exchange for “unrelated
22 advertising purchases” or unspecified “other valuable consideration.” See TAC ¶¶ 2, 7, & 145.
23 Facebook further objects to this Request as improperly seeking to prescribe search terms / parameters on
24 Facebook.

25 Subject to and without waiving the foregoing objections, and subject to the foregoing clarification
26 regarding Facebook’s understanding of the term “Facebook’s data reciprocity policy,” Facebook states
27 that it does not have a “data reciprocity policy,” and so no such documents and communications exist.

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1 **REQUEST FOR PRODUCTION NO. 94:**

2 All DOCUMENTS AND COMMUNICATIONS to and/or from Javier Olivan concerning
3 Facebook's data reciprocity policy, including all documents that refer to "data reciprocity" or
4 "reciprocity" (as those terms are used, for example, in FB-00235810 and FB-00423236), from June 1,
5 2012 to April 30, 2014.

6 **RESPONSE TO REQUEST FOR PRODUCTION NO. 94:**

7 Facebook incorporates each of the General Objections as if they were stated in full and further
8 objects to this Request as overly broad and unduly burdensome in seeking "All DOCUMENTS AND
9 COMMUNICATIONS . . . concerning Facebook's data reciprocity policy" or that use the word
10 "reciprocity" over a period of nearly two years. Facebook further objects to this Request to the extent
11 that it calls for information covered by the attorney-client and work-product privileges. Facebook further
12 objects to this Request as seeking documents that are not relevant to the subject matter of this litigation
13 and not reasonably calculated to lead to the discovery of admissible evidence. Facebook further objects
14 to this Request as improperly seeking to expand the number of document custodians to Facebook's Vice
15 President of Growth, because Facebook denies he had a specific role in the decision to open Graph API
16 beyond the decision-making authority inherent in his role as Vice President of Growth. Facebook further
17 objects to this Request as vague and ambiguous, particularly as to the term "Facebook's data reciprocity
18 policy." Facebook further objects to this Request as improperly seeking to prescribe search terms /
19 parameters on Facebook.

20 Subject to and without waiving the foregoing objections, Facebook states that it does not have a
21 "data reciprocity policy," and so no such documents and communications exist.

22 **FIRST SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION NO. 94:**

23 Facebook incorporates each of the General Objections as if they were stated in full and further
24 objects to this Request as overly broad and unduly burdensome in seeking "All DOCUMENTS AND
25 COMMUNICATIONS . . . concerning Facebook's data reciprocity policy" or that use the word
26 "reciprocity" over a period of nearly two years. Facebook further objects to this Request to the extent
27 that it calls for information covered by the attorney-client and work-product privileges. Facebook further
28 objects to this Request as seeking documents that are not relevant to the subject matter of this litigation

1 and not reasonably calculated to lead to the discovery of admissible evidence. Facebook further objects
2 to this Request as improperly seeking to expand the number of document custodians to Facebook's Vice
3 President of Growth, because Facebook denies he had a specific role in the decision to open Graph API
4 beyond the decision-making authority inherent in his role as Vice President of Growth. Facebook further
5 objects to this Request as vague and ambiguous, particularly as to the term "Facebook's data reciprocity
6 policy." For the purposes of this Response, Facebook understands the term "Facebook's data reciprocity
7 policy" to refer to an alleged policy whereby Facebook offered unspecified "unfair competitive
8 advantages" and/or "special access" to data in exchange for "unrelated advertising purchases" or
9 unspecified "other valuable consideration." See TAC ¶¶ 2, 7, & 145. Facebook further objects to this
10 Request as improperly seeking to prescribe search terms / parameters on Facebook.

11 Subject to and without waiving the foregoing objections, and subject to the foregoing clarification
12 regarding Facebook's understanding of the term "Facebook's data reciprocity policy," Facebook states
13 that it does not have a "data reciprocity policy," and so no such documents and communications exist.

14 **REQUEST FOR PRODUCTION NO. 95:**

15 All DOCUMENTS AND COMMUNICATIONS to and/or from Ilya Sukhar concerning
16 Facebook's data reciprocity policy, including all documents that refer to "data reciprocity" or
17 "reciprocity" (as those terms are used, for example, in FB-00235810 and FB-00423236), from June 1,
18 2012 to April 30, 2014.

19 **RESPONSE TO REQUEST FOR PRODUCTION NO. 95:**

20 Facebook incorporates each of the General Objections as if they were stated in full and further
21 objects to this Request as overly broad and unduly burdensome in seeking "All DOCUMENTS AND
22 COMMUNICATIONS . . . concerning Facebook's data reciprocity policy" or that use the word
23 "reciprocity" over a period of nearly two years. Facebook further objects to this Request to the extent
24 that it calls for information covered by the attorney-client and work-product privileges. Facebook further
25 objects to this Request as seeking documents that are not relevant to the subject matter of this litigation
26 and not reasonably calculated to lead to the discovery of admissible evidence. Facebook further objects
27 to this Request as improperly seeking to expand the number of document custodians to Facebook's Head
28 of Developer Products, because Facebook denies he had a specific role in the decision to open Graph API

beyond the decision-making authority inherent in his role as Head of Developer Products. Facebook further objects to this Request as vague and ambiguous, particularly as to the term “Facebook’s data reciprocity policy.” Facebook further objects to this Request as improperly seeking to prescribe search terms / parameters on Facebook.

Subject to and without waiving the foregoing objections, Facebook states that it does not have a “data reciprocity policy.” Facebook nonetheless has searched Ilya Sukhar’s documents for the period from September 1, 2011 through April 30, 2015, using the search term “data w/7 reciproc!” and will produce non-privileged responsive documents that hit on that search term.

FIRST SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION NO. 95:

Facebook incorporates each of the General Objections as if they were stated in full and further objects to this Request as overly broad and unduly burdensome in seeking “All DOCUMENTS AND COMMUNICATIONS . . . concerning Facebook’s data reciprocity policy” or that use the word “reciprocity” over a period of nearly two years. Facebook further objects to this Request to the extent that it calls for information covered by the attorney-client and work-product privileges. Facebook further objects to this Request as seeking documents that are not relevant to the subject matter of this litigation and not reasonably calculated to lead to the discovery of admissible evidence. Facebook further objects to this Request as improperly seeking to expand the number of document custodians to Facebook’s Head of Developer Products, because Facebook denies he had a specific role in the decision to open Graph API beyond the decision-making authority inherent in his role as Head of Developer Products. Facebook further objects to this Request as vague and ambiguous, particularly as to the term “Facebook’s data reciprocity policy.” For the purposes of this Response, Facebook understands the term “Facebook’s data reciprocity policy” to refer to an alleged policy whereby Facebook offered unspecified “unfair competitive advantages” and/or “special access” to data in exchange for “unrelated advertising purchases” or unspecified “other valuable consideration.” *See* TAC ¶¶ 2, 7, & 145. Facebook further objects to this Request as improperly seeking to prescribe search terms / parameters on Facebook.

Subject to and without waiving the foregoing objections, and subject to the foregoing clarification regarding Facebook’s understanding of the term “Facebook’s data reciprocity policy,” Facebook states that it does not have a “data reciprocity policy,” and so no such documents and communications exist.

1 **REQUEST FOR PRODUCTION NO. 96:**

2 All DOCUMENTS AND COMMUNICATIONS to and/or from Michael Vernal concerning
3 Facebook's data reciprocity policy, including all documents that refer to "data reciprocity" or
4 "reciprocity" (as those terms are used, for example, in FB-00235810 and FB-00423236), from June 1,
5 2012 to April 30, 2014.

6 **RESPONSE TO REQUEST FOR PRODUCTION NO. 96:**

7 Facebook incorporates each of the General Objections as if they were stated in full and further
8 objects to this Request as overly broad and unduly burdensome in seeking "All DOCUMENTS AND
9 COMMUNICATIONS . . . concerning Facebook's data reciprocity policy" or that use the word
10 "reciprocity" over a period of nearly two years. Facebook further objects to this Request to the extent
11 that it calls for information covered by the attorney-client and work-product privileges. Facebook further
12 objects to this Request as seeking documents that are not relevant to the subject matter of this litigation
13 and not reasonably calculated to lead to the discovery of admissible evidence. Facebook further objects
14 to this Request as improperly seeking to expand the number of document custodians. Facebook further
15 objects to this Request as vague and ambiguous, particularly as to the term "Facebook's data reciprocity
16 policy." Facebook further objects to this Request as improperly seeking to prescribe search terms /
17 parameters on Facebook.

18 Subject to and without waiving the foregoing objections, Facebook states that it does not have a
19 "data reciprocity policy," and so no such documents and communications exist. Facebook nonetheless
20 will search Michael Vernal's documents for the period from June 1, 2012 to April 30, 2014, using all
21 search terms previously agreed to by the parties as well as the additional term

- 22 • "data reciprocity"

23 and will produce non-privileged documents responsive to that search term.

24 **FIRST SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION NO. 96:**

25 Facebook incorporates each of the General Objections as if they were stated in full and further
26 objects to this Request as overly broad and unduly burdensome in seeking "All DOCUMENTS AND
27 COMMUNICATIONS . . . concerning Facebook's data reciprocity policy" or that use the word
28 "reciprocity" over a period of nearly two years. Facebook further objects to this Request to the extent

1 that it calls for information covered by the attorney-client and work-product privileges. Facebook further
2 objects to this Request as seeking documents that are not relevant to the subject matter of this litigation
3 and not reasonably calculated to lead to the discovery of admissible evidence. Facebook further objects
4 to this Request as improperly seeking to expand the number of document custodians. Facebook further
5 objects to this Request as vague and ambiguous, particularly as to the term “Facebook’s data reciprocity
6 policy.” For the purposes of this Response, Facebook understands the term “Facebook’s data reciprocity
7 policy” to refer to an alleged policy whereby Facebook offered unspecified “unfair competitive
8 advantages” and/or “special access” to data in exchange for “unrelated advertising purchases” or
9 unspecified “other valuable consideration.” See TAC ¶¶ 2, 7, & 145. Facebook further objects to this
10 Request as improperly seeking to prescribe search terms / parameters on Facebook.

11 Subject to and without waiving the foregoing objections, and subject to the foregoing clarification
12 regarding Facebook’s understanding of the term “Facebook’s data reciprocity policy,” Facebook states
13 that it does not have a “data reciprocity policy.” Facebook nonetheless has searched Michael Vernal’s
14 documents for the period from June 1, 2012 to April 30, 2014, using all search terms previously agreed to
15 by the parties as well as the additional term

16 • “data reciprocity”
17 and has non-privileged responsive documents that hit on that search term.

18 Dated: October 20, 2017

AS TO OBJECTIONS:

19 DURIE TANGRI LLP

20
21 By: /s/ Laura E. Miller
LAURA E. MILLER

22 Attorneys for Defendant
23 Facebook, Inc.
24
25
26
27
28

1 I, Allison Hendrix, as an authorized representative of Facebook, Inc. ("Facebook"), certify and
2 declare under penalty of perjury under the laws of the State of California that I have read and reviewed
3 Defendant Facebook, Inc.'s Supplemental Responses and Objections to Plaintiff Six4Three, LLC's Third
4 Set of Demands for Inspection of Documents (Nos. 91–96), and believe them to be true and accurate
5 based on the information available to Facebook at the present time.

6 Executed on October 22, 2017, at Menlo Park, California.

7 

8 Allison Hendrix

1 **PROOF OF SERVICE**

2 I am a citizen of the United States and resident of the State of California. I am employed in San
3 Francisco County, State of California, in the office of a member of the bar of this Court, at whose
4 direction the service was made. I am over the age of eighteen years, and not a party to the within action.
5 My business address is 217 Leidesdorff Street, San Francisco, CA 94111.

6 On October 20, 2017, I served the following documents in the manner described below:

7 **DEFENDANT FACEBOOK, INC.'S SUPPLEMENTAL RESPONSES AND**
8 **OBJECTIONS TO PLAINTIFF SIX4THREE, LLC'S THIRD SET OF DEMANDS**
9 **FOR INSPECTION OF DOCUMENTS**

- 10 ☐ (BY U.S. MAIL) I am personally and readily familiar with the business practice of Durie
11 Tangri LLP for collection and processing of correspondence for mailing with the United
12 States Postal Service, and I caused such envelope(s) with postage thereon fully prepaid to
13 be placed in the United States Postal Service at San Francisco, California.
- 14 ☐ (BY MESSENGER SERVICE) by consigning the document(s) to an authorized courier
15 and/or process server for hand delivery on this date.
- 16 ☐ (BY FACSIMILE) I am personally and readily familiar with the business practice of
17 Durie Tangri LLP for collection and processing of document(s) to be transmitted by
18 facsimile and I caused such document(s) on this date to be transmitted by facsimile to the
19 offices of addressee(s) at the numbers listed below.
- 20 ☐ (BY OVERNIGHT MAIL) I am personally and readily familiar with the business
21 practice of Durie Tangri LLP for collection and processing of correspondence for overnight
22 delivery, and I caused such document(s) described herein to be deposited for delivery to a
23 facility regularly maintained by Federal Express for overnight delivery.
- 24 ☒ BY ELECTRONIC SERVICE: By electronically mailing a true and correct copy through
25 Durie Tangri's electronic mail system from jcotton@durietangri.com to the email
26 addresses set forth below.
- 27 ☐ (BY PERSONAL DELIVERY) I caused such envelope to be delivered by hand to the
28 offices of each addressee below.

1 On the following part(ies) in this action:

2 Basil P. Fthenakis
3 CRITERION LAW
4 2225 E. Bayshore Road, Suite 200
5 Palo Alto, CA 94303
6 Telephone: 650-352-8400
7 Facsimile: 650-352-8408
8 bpf@criterionlaw.com

9 David S. Godkin
10 James Kruzer
11 BIRNBAUM & GODKIN, LLP
12 280 Summer Street
13 Boston, MA 02210
14 Telephone: 617-307-6100
15 godkin@birnbaumgodkin.com
16 kruzer@birnbaumgodkin.com

17 *Attorneys for Plaintiff*
18 *Six4Three, LLC*

19 I declare under penalty of perjury under the laws of the United States of America that the
20 foregoing is true and correct. Executed on October 20, 2017, at San Francisco, California.



21 Janelle Cotton

DURIE TANGRI LLP
SONAL N. MEHTA (SBN 222086)
smehta@durietangri.com
JOSHUA H. LERNER (SBN 220755)
jlerner@durietangri.com
LAURA E. MILLER (SBN 271713)
lmiller@durietangri.com
CATHERINE Y. KIM (SBN 308442)
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217 Leidesdorff Street
San Francisco, CA 94111
Telephone: 415-362-6666
Facsimile: 415-236-6300

Attorneys for Defendants
Facebook, Inc., Mark Zuckerberg, Christopher Cox, Javier
Olivan, Samuel Lessin, Michael Vernal, and Ilya Sukhar

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO

SIX4THREE, LLC, a Delaware limited liability
company,

Plaintiff,

v.

FACEBOOK, INC., a Delaware corporation;
MARK ZUCKERBERG, an individual;
CHRISTOPHER COX, an individual;
JAVIER OLIVAN, an individual;
SAMUEL LESSIN, an individual;
MICHAEL VERNAL, an individual;
ILYA SUKHAR, an individual; and
DOES 1-50, inclusive,

Defendants.

Case No. CIV 533328

**Assigned for all purposes to Hon. Marie S.
Weiner, Dept. 2**

**DEFENDANTS MARK ZUCKERBERG,
CHRISTOPHER COX, JAVIOR OLIVAN,
SAMUEL LESSIN, MICHAEL VERNAL, AND
ILYA SUKHAR'S PEREMPTORY
CHALLENGE PURSUANT TO CALIFORNIA
CODE OF CIVIL PROCEDURE SECTION
170.6; DECLARATION OF JOSHUA LERNER**

Dept: 2 (Complex Civil Litigation)
Judge: Honorable Marie S. Weiner

FILING DATE: April 10, 2015
TRIAL DATE: April 25, 2019

1 Defendants MARK ZUCKERBERG, CHRISTOPHER COX, JAVIOR OLIVAN, SAMUEL
2 LESSIN, MICHAEL VERNAL, and ILYA SUKHAR (collectively the "Individual Defendants") hereby
3 exercise their peremptory challenge pursuant to California Code of Civil Procedure section 170.6. The
4 Individual Defendants respectfully request that the entire action, which has been assigned for all purposes
5 to the Honorable Marie W. Weiner, be reassigned to a different judge, and that no matters hereinafter
6 arising in the action be heard by or assigned to Judge Weiner on the grounds that she is prejudiced
7 against the interests of the Individual Defendants and/or their attorneys in this matter.

8 California Code of Civil Procedure section 170.6 provides in pertinent part that in a "trial of a
9 civil cause that has been assigned to a judge for all purposes, the motion shall be made to the assigned
10 judge or to the presiding judge by a party within 15 days after notice of all purpose assignment, or if the
11 party has not yet appeared in the action, then within 15 days after the appearance."

12 On January 16, 2018, the Individual Defendants were served with the Fifth Amended Complaint
13 filed by Plaintiff SIX4THREE, LLC. The Individual Defendants have not yet appeared in this action.

14 This peremptory challenge is based on the matters contained herein, on California Code of Civil
15 Procedure section 170.6 and on the attached supporting declaration of Joshua H. Lerner.

16 Dated: January 19, 2018

DURIE TANGRI LLP

17
18 By: _____



JOSHUA H. LERNER

19 Attorneys for Defendants

20 Mark Zuckerberg, Christopher Cox, Javier Olivan,
21 Samuel Lessin, Michael Vernal, and Ilya Sukhar

DECLARATION OF JOSHUA H. LERNER

I, Joshua H. Lerner, hereby declare as follows:

1. I am an attorney duly admitted to practice before this Court. I am an attorney with Durie Tangri LLP, attorneys of record for Defendants Facebook, Inc., Mark Zuckerberg, Christopher Cox, Javier Olivan, Samuel Lessin, Michael Vernal, and Ilya Sukhar. I have personal knowledge of the facts set forth herein, except as to those stated on information and belief and, as to those, I am informed and believe them to be true. If called as a witness, I could and would competently testify to the matters stated herein. I make this declaration in support of Defendants Mark Zuckerberg, Christopher Cox, Javier Olivan, Samuel Lessin, Michael Vernal, and Ilya Sukhar's Peremptory Challenge Pursuant to California Code of Civil Procedure Section 170.6.

2. The Honorable Marie W. Weiner has been assigned for all purposes to the above-captioned action. With all due respect to the Court, the judge is prejudiced against the interests of Defendants Mark Zuckerberg, Christopher Cox, Javier Olivan, Samuel Lessin, Michael Vernal, and Ilya Sukhar and/or their attorneys in this matter, such that Defendants believe they cannot have a fair and impartial hearing or trial before the judge.

3. On January 18, 2018, Defendants Mark Zuckerberg, Christopher Cox, Javier Olivan, Samuel Lessin, Michael Vernal, and Ilya Sukhar were served with the Fifth Amended Complaint.

4. Defendants Mark Zuckerberg, Christopher Cox, Javier Olivan, Samuel Lessin, Michael Vernal, and Ilya Sukhar have not yet appeared in this action.

5. No defendant has previously exhausted their peremptory challenge permitted under California Code of Civil Procedure Section 170.6 in this litigation.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 19th day of January, 2018, in San Francisco, California.


JOSHUA LERNER

1 **PROOF OF SERVICE**

2 I am a citizen of the United States and resident of the State of California. I am employed in San
3 Francisco County, State of California, in the office of a member of the bar of this Court, at whose
4 direction the service was made. I am over the age of eighteen years, and not a party to the within action.
5 My business address is 217 Leidesdorff Street, San Francisco, CA 94111.

6 On January 19, 2018, I served the following documents in the manner described below:

7 **DEFENDANTS MARK ZUCKERBERG, CHRISTOPHER COX, JAVIOR OLIVAN,**
8 **SAMUEL LESSIN, MICHAEL VERNAL, AND ILYA SUKHAR'S PEREMPTORY**
9 **CHALLENGE PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE**
10 **SECTION 170.6; DECLARATION OF JOSHUA LERNER**

11 ☒ (BY MESSENGER SERVICE) by consigning the document(s) to an authorized courier
12 and/or process server for hand delivery on this date.

13 ☒ BY ELECTRONIC SERVICE: By electronically mailing a true and correct copy through
14 Durie Tangri's electronic mail system from jposada@durietangri.com to the email
15 addresses set forth below.

16 On the following part(ies) in this action:

17 **VIA MESSENGER AND EMAIL**

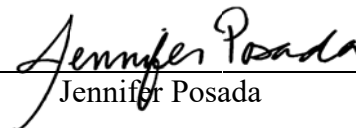
18 Basil P. Fthenakis
19 CRITERION LAW
20 2225 E. Bayshore Road, Suite 200
21 Palo Alto, CA 94303
22 Telephone: 650-352-8400
23 Facsimile: 650-352-8408
24 bpf@criterionlaw.com

25 **VIA EMAIL ONLY**

26 David S. Godkin
27 James Kruzer
28 BIRNBAUM & GODKIN, LLP
280 Summer Street
Boston, MA 02210
Telephone: 617-307-6100
godkin@birnbaumgodkin.com
kruzer@birnbaumgodkin.com

Attorneys for Plaintiff
Six4Three, LLC

I declare under penalty of perjury under the laws of the United States of America that the
foregoing is true and correct. Executed on January 19, 2018, at San Francisco, California.


Jennifer Posada

1 Basil P. Fthenakis, Esq. (88399)
CRITERION LAW
2 2225 E. Bayshore Road, Suite 200
Palo Alto, California 94303
3 Tel. (650) 352-8400
Fax. (650) 352-8408
4

5 Of counsel:

6 David S. Godkin, Esq.
James E. Kruzer, Esq.
BIRNBAUM & GODKIN, LLP
7 280 Summer Street
Boston, MA 02210
8 (617) 307-6100
godkin@birnbaumgodkin.com
9 kruzer@birnbaumgodkin.com

10 Attorneys for Plaintiff,
SIX4THREE, LLC, a Delaware
11 limited liability company

12 SUPERIOR COURT OF CALIFORNIA
13 COUNTY OF SAN MATEO
14

15 SIX4THREE, LLC, a Delaware limited
16 liability company,

17 Plaintiff,

18 v.

19 FACEBOOK, INC., a Delaware corporation
20 and DOES 1 through 50, inclusive

21 Defendants.
22

Case No. CIV 533328

PLAINTIFF'S THIRD SET OF DEMANDS
FOR INSPECTION OF DOCUMENTS TO
DEFENDANT FACEBOOK, INC.

23 Pursuant to California Code of Civil Procedure section 2031.010 *et seq.*, Defendant
24 Facebook, Inc. ("Facebook") is hereby requested to produce for inspection and copying by
25 Plaintiff Six4Three, LLC ("643") the documents described below.

26 You are required to make a written response to this demand for inspection within thirty
27 (30) days of service, *i.e.*, by April 3, 2017. Demand is hereby made that the documents listed
28

1 below be produced by you at the offices of Criterion Law, 2225 E. Bayshore Road, Suite 200,
2 Palo Alto, CA 94303, or at such other location and time as the parties may agree. If any of the
3 documents are too bulky or voluminous to be produced at said time and place, notify the
4 undersigned of the same at least five (5) days before the above date and identify said documents.
5 For good cause shown, special arrangements may be made for the inspection and copying of said
6 documents.

7 You must respond separately to each item or category of item by any of the following:

- 8 (A) A statement that you will comply with the particular demand for
9 inspection and any related activities.
- 10 (B) A representation you lack the ability to comply with the demand for
11 inspection of a particular item or category of item.
- 12 (C) An objection to the demand either in its entirety or in some particular
13 respect.

14 Each statement of compliance, each representation and each objection in the response
15 shall bear the same number and be in the same sequence as the corresponding item or category in
16 the demand, but the text of that item or category need not be repeated.

17 A statement that you will comply with the particular demand shall state all of the
18 following:

- 19 (A) That the production, inspection and related activity demanded will be
20 allowed either in whole or in part.
- 21 (B) That all documents or things in a demanded category that are in your
22 possession, custody or control and to which no objection is being made
23 will be included in the production.

24 Any documents demanded shall either be produce as they are kept in the usual course of
25 business, or be organized and labeled to correspond with the categories in the demand. If
26 necessary, at the reasonable expense of the demanding party, you shall, through detection devices,
27 translate any data compilations included in the demand into reasonably usable form.

1 A representation of inability to comply with the particular demand for inspection shall
2 affirm that a diligent search and a reasonable inquiry has been made in an effort to comply with
3 that demand. This statement shall also specify whether the inability to comply is because the
4 particular item or category of item, (A) has never existed, (B) has been destroyed, (C) has been
5 lost, misplaced or stolen, or (D) has never been, or is no longer, in your possession, custody or
6 control, as well as the name and address of any natural person or organization known or believed
7 by you to have possession, custody or control of that item or category of item.

8 If only a part of an item or category of item in an inspection demand is objectionable, the
9 response shall contain a statement of compliance, or a representation of inability to comply with
10 respect to the remainder of that item or category. If you object to the demand for inspection of an
11 item or category of item, the response shall set forth clearly the extent of, and the specific ground
12 for, the objection. If an objection is based on a claim of privilege, the particular privilege invoked
13 shall be stated. If an objection is based on a claim that the information sought is protected work
14 product prepared in anticipation of litigation or for trial, the claim shall be expressly asserted.

15 Each document produced by you is to be produced in its original folder or other container
16 with all file labels intact.

17 For each document you refuse to produce, you are required to furnish each and all of the
18 following information:

- 19 1. The exact name and the title by which you refer to it;
- 20 2. The date and all serial or other identifying numbers thereon;
- 21 3. The identity of each person who wrote, signed, initiated or otherwise
22 participated in the execution of the document;
- 23 4. The reason why you have refused to produce such documents and all such
24 acts in support of that reason.

25 Unless otherwise specified, the documents requested are for the period from January 1,
26 2007 to the present.

DEFINITIONS

1. "FACEBOOK," "DEFENDANT," "YOU," and "YOUR" mean Facebook, Inc. and its officers, directors, current and former employees, counsel, agents, consultants, representatives, and any other persons acting on behalf of any of the foregoing, and Facebook's affiliates, parents, divisions, joint ventures, licensees, franchisees, assigns, predecessors and successors in interest, and any other legal Entities, whether foreign or domestic, that are owned or controlled by Facebook, and all predecessors and successors in interest to such Entity.

2. "643" and "PLAINTIFF" mean Six4Three, LLC.

3. The "APP" means the Pikinis application created by 643.

4. "FACEBOOK PLATFORM" means the set of APIs that allow developers to make their applications available via Facebook.

5. "DEVELOPER" means a third-party developer of applications for use with Facebook.

6. "API" means application program interface.

7. "ENDPOINT" means a Uniform Resource Locator that a third-party application can access to obtain data from Facebook.

8. "USER" means a Facebook user.

9. "FRIEND" means a USER connected to another USER by a friend relationship on Facebook.

10. "DOCUMENT" shall include, without limitation, all written, graphic or otherwise recorded material, or writings within the meaning of California Evidence Code section 250, including without limitation, electronically stored information regardless of the form of storage medium, microfilms or other film records or impressions, tape recordings or computer cards, floppy disks or printouts, any and all papers, photographs, films, recordings, memoranda, books, records, accounts, communications, letters, telegrams, correspondence, notes of meetings, notes of conversations, notes of telephone calls, inter-office memoranda or written communications of any nature, recordings of conversations either in writings or upon any mechanical or electrical

1 recording devices, including e-mail, Facebook postings, blog entries, instant messages, text
2 messages, Facebook Messenger messages, Twitter tweets, notes, papers, reports, analyses,
3 invoices, canceled checks or check stubs, receipts, minutes of meetings, time sheets, diaries, desk
4 calendars, ledgers, schedules, licenses, financial statements, telephone bills, logs, and any
5 differing versions of any of the foregoing, whether so denominated, formal, informal or
6 otherwise, as well as copies of the foregoing which differ in any way, including by the addition of
7 handwritten notations or other written or printed matter of any nature, from the original. The
8 foregoing specifically includes information stored in a computer database and capable of being
9 generated in documentary form, such as electronic mail.

10 11. "COMMUNICATION" shall mean, without limitation, any transmission,
11 conveyance or exchange of a word, statement, fact, thing, idea, Documents, instruction,
12 information, demand or question by any medium, whether by written, oral or other means,
13 including but not limited to, electronic communications and electronic mail ("E-mail"), Facebook
14 postings, blog entries, instant messages, text messages, Facebook Messenger messages, and
15 Twitter tweets.

16 12. The term "PERSON" shall refer to any individual, corporation, proprietorship,
17 association, joint venture, company, partnership or other business or legal entity, including
18 governmental bodies and agencies.

19 13. "CONCERNING" shall mean referring to, concerning, mentioning, reflecting,
20 pertaining to, evidencing, regarding, involving, describing, discussing, commenting on,
21 embodying, responding to, supporting, contradicting, or constituting (in whole or in part), as the
22 context makes appropriate.

23 14. "INCLUDE" and "INCLUDING" shall mean including without limitation.

24 15. Use of the singular also includes the plural and vice-versa.

25 16. The words "OR" and "AND" shall be read in the conjunctive and in the
26 disjunctive wherever they appear, and neither of these words shall be interpreted to limit the
27 scope of these Document Requests.

1 17. The use of a verb in any tense shall be construed as the use of the verb in all other
2 tenses.

3
4 **REQUESTS FOR PRODUCTION**

5 71. All DOCUMENTS AND COMMUNICATIONS CONCERNING complaints
6 received by Facebook regarding 643's App, including, but not limited to, the complaints
7 themselves.

8 72. All DOCUMENTS AND COMMUNICATIONS CONCERNING the categories
9 of applications Facebook intended to shut down by closing Graph API in its purported attempt to
10 restore user trust, including a list of all such applications.

11 73. All agreements from January 1, 2012 to December 31, 2015 that reference any of
12 the following terms – Private API(s), Extended API(s), Private Extended API(s), Mutual Friends
13 API(s), and Hashed Friends API(s) – as those terms are used in, respectively, FB-00061654, FB-
14 00427401, FB-00043886, FB-00114421, and FB-00027007.

15 74. All agreements entered into between Facebook and any of the companies affected
16 by the closing of Graph API listed in FB-00061614 from January 1, 2012 to December 31, 2015,
17 including, but not limited to, all agreements concerning data access or that entail any financial
18 consideration, such as exchanges of cash, services, or assets.

19 75. All versions and updates of the file containing the "preliminary audit" (FB-
20 00061614) Konstantinos Papamiltiadis refers to in FB-00061367 to FB-00061368 specifying the
21 breakdown of the types of competitive applications, and the specific applications, affected by the
22 closing of Graph API, including the final audit file.

23 76. All DOCUMENTS AND COMMUNICATIONS to and/or from Mark Zuckerberg,
24 Samuel Lessin, Javier Olivan, Christopher Cox, Michael Vernal, Ilya Sukhar, Eddie O'Neil,
25 Simon Cross, or Konstantinos Papamiltiadis and Tinder (including Sean Rad, CEO of Tinder, and
26 Sam Yagan, Director of Tinder) CONCERNING Graph API and/or access to endpoints between
27 April 30, 2014 and June 30, 2015.

1 77. All DOCUMENTS AND COMMUNICATIONS CONCERNING the following
2 photo-sharing applications listed in FB-00061614 from July 1, 2013 to June 30, 2015, including
3 but not limited to: Photo Contest, Photo Roll, Moment.me, ImageShack, Video Love, PhotoStash,
4 Pixier, Socialcam, piZap.com, Muzy.com, Photo Contest, iPhoto, piZap, Pixable, PicCollage,
5 PhotoMania, Photo of the day, PicsArt Photo Studio, Photo Roll, Moment.me, Camera360
6 Sharing, Mobli, TakeThisLollipop, Shufflr, Magisto, BeFunky Editor, FotoRus, Slidely, Fotos de
7 mis amigos, Imikimi, AIS Photobox powered by Pixable, Telly, Fotos de amigos, Timehop,
8 WhoSay, Photo Grid, BrightCam, YouNow, and Klip.

9 78. DOCUMENTS sufficient to show Facebook's quarterly revenues and profits from
10 features and products that rely upon image search recognition or photo or video software from
11 2012 to present, including a breakdown sufficient to show the contributions of distinct products,
12 including, but not limited to, the Facebook.com Photos application, the Moments application (as
13 described, for instance, in FB-00044220), and Facebook Live.

14 79. All DOCUMENTS AND COMMUNICATIONS to and/or from Mark Zuckerberg
15 CONCERNING the Platform Business Model (as that term is used in FB-00423235 – FB-
16 00423236) or Platform Simplification (also known as Graph API, Graph API 2.0, PS12N,
17 Platform 3, Platform 3.0, P3, or Login v4) from June 1, 2011 to December 31, 2015.

18 80. All DOCUMENTS AND COMMUNICATIONS to and/or from Christopher Cox
19 CONCERNING the Platform Business Model (as that term is used in FB-00423235 – FB-
20 00423236) or Platform Simplification (also known as Graph API, Graph API 2.0, PS12N,
21 Platform 3, Platform 3.0, P3, or Login v4) from June 1, 2011 to December 31, 2015.

22 81. All DOCUMENTS AND COMMUNICATIONS to and/or from Samuel Lessin
23 CONCERNING the Platform Business Model (as that term is used in FB-00423235 – FB-
24 00423236) or Platform Simplification (also known as Graph API, Graph API 2.0, PS12N,
25 Platform 3, Platform 3.0, P3, or Login v4) from June 1, 2011 to December 31, 2015.

26 82. All DOCUMENTS AND COMMUNICATIONS to and/or from Javier Olivan
27 CONCERNING the Platform Business Model (as that term is used in FB-00423235 – FB-
28

1 00423236) or Platform Simplification (also known as Graph API, Graph API 2.0, PS12N,
2 Platform 3, Platform 3.0, P3, or Login v4) from June 1, 2011 to December 31, 2015.

3 83. All DOCUMENTS AND COMMUNICATIONS to and/or from Michael Vernal
4 CONCERNING the Platform Business Model (as that term is used in FB-00423235 – FB-
5 00423236) or Platform Simplification (also known as Graph API, Graph API 2.0, PS12N,
6 Platform 3, Platform 3.0, P3, or Login v4) from June 1, 2011 to December 31, 2015.

7 84. All DOCUMENTS AND COMMUNICATIONS to and/or from Ilya Sukhar
8 CONCERNING the Platform Business Model (as that term is used in FB-00423235 – FB-
9 00423236) or Platform Simplification (also known as Graph API, Graph API 2.0, PS12N,
10 Platform 3, Platform 3.0, P3, or Login v4) from June 1, 2011 to December 31, 2015.

11 85. All DOCUMENTS AND COMMUNICATIONS containing the root-expanded
12 word “competit!” within 15 words of “NEKO” or “spend” to and/or from Michael Vernal from
13 June 1, 2012 to April 30, 2014.

14 86. All DOCUMENTS AND COMMUNICATIONS containing the root-expanded
15 word “competit!” within 15 words of “NEKO”, “spend”, “whitelist” or “Read API” to and/or
16 from Mark Zuckerberg from June 1, 2012 to April 30, 2014.

17 87. All DOCUMENTS AND COMMUNICATIONS containing the root-expanded
18 word “competit!” within 15 words of “NEKO”, “spend”, “whitelist” or “Read API” to and/or
19 from Christopher Cox from June 1, 2012 to April 30, 2014.

20 88. All DOCUMENTS AND COMMUNICATIONS containing the root-expanded
21 word “competit!” within 15 words of “NEKO”, “spend”, “whitelist” or “Read API” to and/or
22 from Samuel Lessin from June 1, 2012 to April 30, 2014.

23 89. All DOCUMENTS AND COMMUNICATIONS containing the root-expanded
24 word “competit!” within 15 words of “NEKO”, “spend”, “whitelist” or “Read API” to and/or
25 from Javier Olivan from June 1, 2012 to April 30, 2014.

90. All DOCUMENTS AND COMMUNICATIONS containing the root-expanded word “competit!” within 15 words of “NEKO”, “spend”, “whitelist” or “Read API” to and/or from Ilya Sukhar from June 1, 2012 to April 30, 2014.

91. All DOCUMENTS AND COMMUNICATIONS to and/or from Mark Zuckerberg concerning Facebook's data reciprocity policy, including all documents that refer to "data reciprocity" or "reciprocity" (as those terms are used, for example, in FB-00235810 and FB-00423236), from June 1, 2012 to April 30, 2014.

92. All DOCUMENTS AND COMMUNICATIONS to and/or from Christopher Cox concerning Facebook's data reciprocity policy, including all documents that refer to "data reciprocity" or "reciprocity" (as those terms are used, for example, in FB-00235810 and FB-00423236), from June 1, 2012 to April 30, 2014.

93. All DOCUMENTS AND COMMUNICATIONS to and/or from Samuel Lessin concerning Facebook’s data reciprocity policy, including all documents that refer to “data reciprocity” or “reciprocity” (as those terms are used, for example, in FB-00235810 and FB-00423236), from June 1, 2012 to April 30, 2014.

94. All DOCUMENTS AND COMMUNICATIONS to and/or from Javier Olivan concerning Facebook's data reciprocity policy, including all documents that refer to "data reciprocity" or "reciprocity" (as those terms are used, for example, in FB-00235810 and FB-00423236), from June 1, 2012 to April 30, 2014.

95. All DOCUMENTS AND COMMUNICATIONS to and/or from Ilya Sukhar concerning Facebook’s data reciprocity policy, including all documents that refer to “data reciprocity” or “reciprocity” (as those terms are used, for example, in FB-00235810 and FB-00423236), from June 1, 2012 to April 30, 2014.

96. All DOCUMENTS AND COMMUNICATIONS to and/or from Michael Vernal concerning Facebook's data reciprocity policy, including all documents that refer to "data reciprocity" or "reciprocity" (as those terms are used, for example, in FB-00235810 and FB-00423236), from June 1, 2012 to April 30, 2014.

1 97. All DOCUMENTS AND COMMUNICATIONS between September 1, 2013 and
2 April 30, 2015 CONCERNING Facebook's policy to require that apps spend "at least \$250k a
3 year to maintain access" to Graph API data, as that policy is described in FB-00061251.

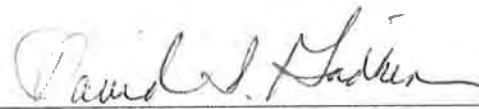
4 98. All DOCUMENTS AND COMMUNICATIONS in Mark Zuckerberg's possession
5 between January 1, 2014 and April 30, 2014 with the words "F8" or "script" or "announcement"
6 (as those terms are used in FB-00188599), including all drafts of his F8 announcement that was
7 delivered on April 30, 2014 and shut down 643's App.

8
9 Dated: March 3, 2017

CRITERION LAW

10 BIRNBAUM & GODKIN, LLP

11
12 By:



Basil P. Fthenakis

David S. Godkin (admitted *pro hac vice*)

James E. Kruzer (admitted *pro hac vice*)

Attorneys for Plaintiff

Six4Three, LLC

PROOF OF SERVICE

I, Cheryl A. McDuffee, declare:

I am a citizen of the United States and employed in Suffolk County, Massachusetts. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 280 Summer Street, Boston, MA 02210. On March 3, 2017, I served a copy of the within document(s):

PLAINTIFF'S THIRD SET OF DEMANDS FOR INSPECTION OF DOCUMENTS TO
DEFENDANT FACEBOOK, INC.

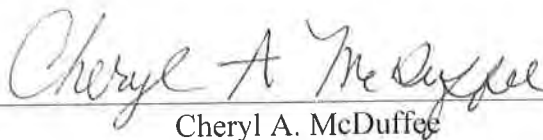
☒ by electronic service, per the agreement of the parties, by emailing a true and correct copy through counsel's email address to Defendant's counsel of record at the email addresses set forth below.

Sonal N. Mehta
Laura Miller
Catherine Y. Kim
Durie Tangri
217 Leidesdorff Street
San Francisco, CA 94111
Tel: (415) 376 -- 6427
smehta@durietangri.com
lmiller@durietangri.com
ckim@durietangri.com
Service-Six4Three@durietangri.com

Attorney for Defendant
FACEBOOK, INC.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed March 3, 2017, at Boston, Massachusetts.


Cheryl A. McDuffee

FILED
SAN MATEO COUNTY

SEP 11 2017

Clerk of the Superior Court
By MM
DEPUTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN MATEO
COMPLEX CIVIL LITIGATION

SIX4THREE LLC,

Case No. CIV 533328

Plaintiff,

Assigned for All Purposes to
Hon. Marie S. Weiner, Dept. 2

vs.

CASE MANAGEMENT ORDER #5

FACEBOOK, INC., and DOES 1
through 50,

Defendants.

_____ /

On September 11, 2017, a Discovery Conference was held in Department 2 of this Court before the Honorable Marie S. Weiner. Basil Fthenakis of Criterion Law and David Godkin of Birnbaum & Godkin LLP appeared on behalf of Plaintiff Six4Three LLC; and Joshua Lerner and Laura Miller Kim of Durie Tangri LLP appeared on behalf of Defendant Facebook Inc. Natalie Naugle, Esq., in-house counsel at Facebook Inc., also appeared.

The status of discovery and discovery disputes were discussed.

CIV533328
CMO
Case Management Order
704130



In the course of discussion for setting the date of the next Discovery Conference, counsel for the parties agreed to continue the hearing date on the pending Demurrer, to accommodate a conflict of Plaintiff's counsel.

The Court made the following rulings at the Conference, which are set forth herein as the formal order of this Court.

IT IS HEREBY ORDERED as follows:

1. Defendant's Demurrer to the Third Amended Complaint, set for hearing on October 4, 2017, is CONTINUED and now set for hearing on **Thursday, October 12, 2017 at 9:00 a.m.** in Department 2 of this Court. The briefing schedule previously set will remain the same.

2. Counsel for the parties shall meet and confer to set the new (or additional) deposition dates and locations for Bernie Hogan, Simon Cross, Ilya Sukhar, Dave Morin, Hadi Partovi, Michael Vernal, and Konstantinos Papamiltiadis.

3. 37 documents were redacted by Defendant prior to production, on the basis of third party privilege, and counsel for the parties agreed to have the Court do an *in camera* review of those documents. Defendant agreed to deliver a set of the unredacted and redacted form of the 37 documents directly to Department 2 by September 12, 2017.

4. Defendant shall produce its supplemental production of documents and revised privilege log on or before September 12, 2017.

5. Without prejudice to Plaintiff's right to request further searches and productions, Defendant proposed and shall conduct additional ESI search for "custodians" Sam Lessin and Ilya Sukhar for the time period September 1, 2011 through April 30, 2015, using the following search terms:

friend w/3 data
friends w/3 data

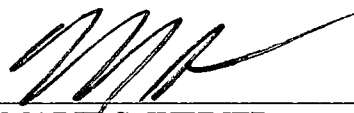
friends' w/3 data
friend w/3 endpoint
friend w/3 endpoints
friends w/3 endpoint
friends w/3 endpoints.
friends' w/3 endpoint
friends' w/3 endpoints
P3
PS12n
"Platform 3"
"graph api"
"compet* AND neko"
data w/7 reciproc!
data w/7 reciproc*
"250 w/7 spend"
"250k w/7 spend"
"250000 w/7 spend"
"250,000 w/7 spend"
"250 w/7 neko"
"250k w/7 neko"
"250000 w/7 neko"
"250,000 w/7 neko"
deprecate* AND friend*
compet* AND neko
compet* AND spend

All responsive documents shall be produced on or before **October 11, 2017**.

6. In regard to the glossary index of persons identified on Defendant's privilege log who it claims are attorneys or otherwise legal professionals as to whom any assertion of the attorney-client privilege or attorney work product privilege is based, on or before **September 28, 2017**, Defendant shall produce an updated glossary with identification of the time period that the person worked as an attorney performing legal services to Defendant, the time period when that person licensed to practice law was no longer working as an attorney performing legal services for Facebook (but was still employed by Facebook), and the job title of those non-attorneys identified in the glossary.

7. A Discovery Conference is set for **Thursday, October 12, 2017 at 9:00 a.m.** in Department 2 of this Court, to discuss ALL outstanding discovery disputes. Counsel for the parties shall directly submit to Department 2, and serve upon counsel for all parties, a short letter brief on outstanding issues, *after meet and confer*, with supporting information for the Court, on or before **October 5, 2017**. If there are no discovery disputes, counsel should so notify the Court and the Discovery Conference will be taken off calendar.

DATED: September 11, 2017



HON. MARIE S. WEINER
JUDGE OF THE SUPERIOR COURT

SERVICE LIST
Six4Three v. Facebook, CIV 533328
as of May 3, 2017

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9 San Francisco, CA 94111
10 Telephone: 415-362-6666
11 Facsimile: 415-236-6300

12 Attorneys for Defendant
13 Facebook, Inc.

14
15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 COUNTY OF SAN MATEO

17 SIX4THREE, LLC, a Delaware limited liability
18 company,

19 Plaintiff,

20 v.

21 FACEBOOK, INC., a Delaware corporation and
22 DOES 1-50, inclusive,

23 Defendant.

FILED
SAN MATEO COUNTY

DEC 13 2016

Clerk of the Superior Court

By

DEPUTY CLERK

Case No. CIV 533328

gek
**[PROPOSED] ORDER GRANTING IN PART
AND DENYING IN PART DEFENDANT
FACEBOOK, INC.'S MOTION FOR A
PROTECTIVE ORDER LIMITING
PRODUCTION RESPONSIVE TO
DOCUMENT REQUEST NOS. 5, 25, AND 26**

Date: 9:00 a.m.

Time: December 5, 2016

Ctrm: Law and Motion Dept.

Judge: Honorable Jonathan E. Karesh

FILING DATE: April 10, 2015

TRIAL DATE: May 15, 2017

CIV533328

OAH

Order After Hearing

293884



**[PROPOSED] ORDER GRANTING IN PART AND DENYING IN PART DEF'S MOTION FOR A
PROTECTIVE ORDER LIMITING PRODUCTION RESPONSIVE TO DOCUMENT REQUEST NOS. 5,
25, AND 26 / CASE NO. CIV 533328**

BG000630

1



1 Defendant Facebook, Inc.'s motion for a protective order as to Plaintiff's Requests for Production
2 Nos. 5, 25, and 26 is GRANTED-IN-PART and DENIED-IN-PART. The primary issue here is undue
3 burden, not relevance. As Plaintiff notes, the Second Amended Complaint alleges actions by Facebook,
4 beginning prior to 2007, that lured developers, including Plaintiff, to develop applications that
5 promoted/enhanced Facebook's website, and then, in 2015, effectively shut down the Facebook Platform
6 to Plaintiff and other developers who had been relying for years on Facebook's alleged promises not to
7 favor Facebook's applications over those of other developers. Given the SAC's allegations, the Requests
8 at issue in this motion are at least reasonably calculated to lead to the discovery of admissible evidence.
9 Code Civ. Proc. Sect. 2017.010; *Davies v. Superior Ct.* (1984) 36 Cal.3d 291, 301; *Volkswagen of*
10 *America, Inc. v. Superior Ct.* (2006) 139 Cal.App.4th 1481, 1490-1491.

11 Facebook, however has submitted evidence indicating these Requests potentially encompass
12 dozens of business groups, hundreds of employees, millions of documents and communications, and
13 potentially resulting in a cost millions of dollars to review and produce. Nov. 28, 2016 Miller Decl.,
14 Parag. 2. While these estimates are clearly speculative, the Court agrees Requests Nos. 5 and 25 are
15 overbroad and unduly burdensome.

16 Notwithstanding the fact the requested documents are the subject of a Court order compelling
17 their production, when ordering the documents produced, the Court specifically referenced the potential
18 need to limit their scope in the event the production proves unduly burdensome. Sept. 8, 2016 Hearing
19 Transcript. The Court notes Facebook's representation that it ran a search for documents responsive to
20 Plaintiff's other pending document Requests (excluding Nos. 5, 25 and 26) using eight custodians and 54
21 search terms, which returned over 100,000 responsive documents. Facebook promises a production of
22 these documents by the Dec. 5, 2015 deadline following a privilege review.

23 As to Request No. 5, the motion is GRANTED.

24 As to Request No. 25, it is neither feasible nor reasonable to compel production of all responsive
25 documents. The parties' papers describe an "extensive" meet and confer regarding this Request, but
26 neither party identifies any proposed compromise language (narrowing language) that would make a
27 production feasible. Instead, both sides take a hard line position: Plaintiff seeks production of all
28 responsive documents, dismissing claim of undue burden, whereas Facebook wants a protective order

1 eliminating the Request entirely. The parties could find a solution by, for example, limiting the time
2 frame of the Request, reducing the number of custodians, reducing the number of search terms, etc. The
3 parties are in the best position to narrow the Request.

4 As to No. 25, Plaintiff has agreed to narrow the request to the Moments App. The parties shall
5 meet and confer and agree, within 7 days of the Court's Order on this motion, to language
6 limiting/narrowing the Request. If the parties reach an agreement, they should also agree on a production
7 date for the Request, not to exceed 3 weeks from the submission of the agreement to the Court. If the
8 parties cannot agree, Plaintiff shall provide Facebook, within 7 days of the Court's Order on this motion,
9 its proposal to narrow Request No. 25. Facebook should prepare its own proposal. Facebook shall then
10 run a search for responsive documents using each party's proposals as to both Requests, and shall
11 provide the Court, within 14 days of the Court's Order on this motion, (a) a copy of both parties'
12 proposals; and (b) a sworn statement indicating the number of responsive documents that exist pertaining
13 to each side's proposals. The Court will review the proposals (and the corresponding number of
14 document hits) and decide whether to compel a production, which could mean choosing one or neither of
15 the parties' proposals. The Court will consider sanctions against any party not attempting to resolve this
16 dispute in good faith. Facebook shall have 3 weeks after the Court's ~~Order~~ ^{Decision JEL} regarding the proposals to
17 produce documents responsive to Request No. 25.

18 As to Request No. 26, the motion is GRANTED. While the Request is arguably "reasonably
19 calculated to lead to the discovery of admissible evidence," it is identical to Request 25, but focuses on
20 Instagram rather than Facebook. The allegations in the SAC center on Facebook's website and Platform.
21 Although a wholly-owned subsidiary, Instagram is a separate company and not a party. The SAC's
22 allegations are not directed to the Instagram website or platform. Plaintiff alleges damage from
23 Facebook preventing access to Facebook's Platform, specifically, its Friend's Photos Endpoint. None of
24 the allegations pertain to Instagram. Because documents pertaining to Facebook's use of image
25 recognition software on Instagram are of marginal relevance, any relevance is outweighed by the undue
26 burden of their production. Code Civ. Proc. Sect. 2031.060(f).

27
28 IT IS SO ORDERED.

1 Dated:

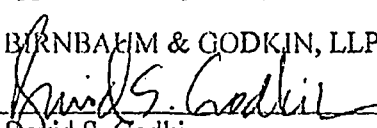
2 DEC 12 2016

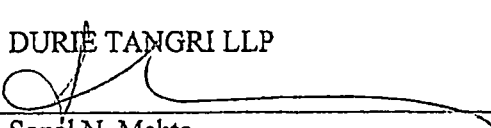
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6 HONORABLE JONATHAN E. KARESH
7 SUPERIOR COURT JUDGE

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Approved as to form by:

BIRNBAUM & GODKIN, LLP

DURIE TANGRI LLP


David S. Godkin


Sonal N. Mehta

1 **PROOF OF SERVICE**

2 I am a citizen of the United States and resident of the State of California. I am employed in San
3 Francisco County, State of California, in the office of a member of the bar of this Court, at whose
4 direction the service was made. I am over the age of eighteen years, and not a party to the within action.
5 My business address is 217 Leidesdorff Street, San Francisco, CA 94111.

6 On December 7, 2016, I served the following documents in the manner described below:

7 **[PROPOSED] ORDER GRANTING IN PART AND DENYING IN PART**
8 **DEFENDANT FACEBOOK, INC.'S MOTION FOR A PROTECTIVE ORDER**
9 **LIMITING PRODUCTION RESPONSIVE TO DOCUMENT REQUEST NOS. 5, 25,**
10 **AND 26**

- 11 ☐ (BY U.S. MAIL) I am personally and readily familiar with the business practice of Durie
12 Tangri LLP for collection and processing of correspondence for mailing with the United
13 States Postal Service, and I caused such envelope(s) with postage thereon fully prepaid to
14 be placed in the United States Postal Service at San Francisco, California.
- 15 ☐ (BY MESSENGER SERVICE) by consigning the document(s) to an authorized courier
16 and/or process server for hand delivery on this date.
- 17 ☐ (BY FACSIMILE) I am personally and readily familiar with the business practice of
18 Durie Tangri LLP for collection and processing of document(s) to be transmitted by
19 facsimile and I caused such document(s) on this date to be transmitted by facsimile to the
20 offices of addressee(s) at the numbers listed below.
- 21 ☐ (BY OVERNIGHT MAIL) I am personally and readily familiar with the business
22 practice of Durie Tangri LLP for collection and processing of correspondence for overnight
23 delivery, and I caused such document(s) described herein to be deposited for delivery to a
24 facility regularly maintained by Federal Express for overnight delivery.
- 25 ☒ BY ELECTRONIC SERVICE: By electronically mailing a true and correct copy through
26 Durie Tangri's electronic mail system from jcotton@durietangri.com to the email
27 addresses set forth below.
- 28 ☐ (BY PERSONAL DELIVERY) I caused such envelope to be delivered by hand to the
offices of each addressee below.

On the following part(ies) in this action:

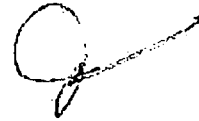
Basil P. Fthenakis
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2225 E. Bayshore Road, Suite 200
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Telephone: 650-352-8400
Facsimile: 650-352-8408
bpf@criterionlaw.com

1 David S. Godkin
2 James Kruzer
3 BIRNBAUM & GODKIN, LLP
4 280 Summer Street
5 Boston, MA 02210
6 Telephone: 617-307-6100
7 godkin@birnbaumgodkin.com
8 kruzer@birnbaumgodkin.com

9 *Attorneys for Plaintiff*
10 *Six4Three, LLC*

11 I declare under penalty of perjury under the laws of the United States of America that the
12 foregoing is true and correct. Executed on December 7, 2016, at San Francisco, California.
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Janelle Cotton



SUPERIOR COURT OF SAN MATEO COUNTY
 400 County Center 1050 Mission Road
 Redwood City, CA 94063 South San Francisco, CA 94080
www.sanmateocourt.org

Minute Order

SIX4THREE, LLC VS FACEBOOK, INC, ET AL

CIV533328

December 08, 2016 9:00 AM

Motion hearings

Judicial Officer: Karesh, Jonathan E

Location: Courtroom 8C

Courtroom Clerk: Tia Tiapula

Courtroom Reporter: Rosa DeNola

Minutes

Journals

- No appearance by any parties herein or their counsel of record.

Tentative ruling adopted and becomes order:

MOTION FOR ORDER TO COMPEL FURTHER RESPONSES TO DEMAND FOR INSPECTION OF DOCUMENTS

Plaintiff s motion to compel Defendant Facebook, Inc. to provide further responses to Plaintiff s Requests for Production of Documents, Set Two, and for sanctions, is addressed as follows:

As to Request Nos. 35, 39-43, 47-52, 65-66, and 68-70, Facebook has agreed to produce responsive documents, and for some of these Requests served supplemental responses prior to the hearing on this motion. The parties, however, continue to dispute custodians and search terms.

As was stated previously, document relevance must be balanced against the undue burden of production. Facebook has agreed to search for responsive documents using eight custodians, but Plaintiff wants five more custodians (for a total of 13). Plaintiff also contends Facebook is not using all of the agreed-upon search terms.

As the parties have been requested to do with respect to Plaintiff s Request Nos. 5 and 25 (in Plaintiff s Requests for Production, Set One), the parties are ordered to further meet and confer and agree, by Dec. 22, 2016, on which custodians and search terms Facebook will use in its document search. As part of that discussion, the parties shall also consider time/date limitations so as to reduce the burden of production.

If the parties reach an agreement, then Facebook shall serve further responses to the above Requests and produce any additional responsive documents (per the agreed-upon custodians and search terms) by January 26, 2017. If the parties cannot agree, then they shall jointly submit to the Court, by Jan. 5, 2017, their competing proposals as to the custodians and search terms they contend should be used. Any submission to the Court shall be accompanied by a Facebook declaration stating, to the extent possible, the number/volume of documents that would need to be reviewed under each side s proposal. The Court will then decide whether to compel a further response and production, which may mean choosing one or neither of the proposals.

The Court will consider sanctions against any party not meeting and conferring in good faith to narrow the Requests.

Although the Court previously provided the parties a different deadline to meet and confer regarding Requests Nos. 5 and 25 (in Plaintiff's Requests for Production, Set One), the parties should include Nos. 5 and 25 in the above-referenced meet and confer, and to the extent they need to submit any proposals to the Court regarding Plaintiff's Requests for Production, should do so in one filing, by the above dates. The motion is MOOT as to Request Nos. 36-37, and 67. See Reply (first Parag.). The motion is DENIED as to Request Nos. 38 and 44-46. Given that the Games Group API and Parse app were deprecated/retired long after closure of the Friends Photos Endpoint and long after Plaintiff filed this case, the burden of a further response and production outweighs the relevance. The motion is DENIED as to Request Nos. 53-55 on grounds that the burden of a further response and production outweighs the relevance. This ruling, however, does not alter the Court's prior Order instructing the parties to meet and confer as to Plaintiff's Requests Nos. 5 and 25.

As to Request Nos. 56-64, the motion is GRANTED-IN-PART. As part of the parties' meet and confer discussed above, the parties shall agree on language narrowing the above Requests in order to make a response less burdensome. Facebook shall identify and use in its document search at least one custodian who was involved in and is knowledgeable of the 2007 Facebook Platform launch. The Court recognizes 2007 is long before Plaintiff became a Facebook developer in 2012. Given the broad scope of discovery, however, that fact does not preclude discovery from this time frame, so long as it is reasonable in scope and not unduly burdensome.

The request for sanctions is DENIED. The Court finds Defendant acted with substantial justification in responding to Plaintiff's Requests and opposing this motion.

If the tentative ruling is uncontested, it shall become the order of the Court, pursuant to CRC Rule 3.1308(a)(1), adopted by Local Rule 3.10. If the tentative ruling is contested, prevailing party is directed to prepare, circulate, and submit a written order reflecting this Court's ruling verbatim for the Court's signature, consistent with the requirements of CRC Rule 3.1312. The proposed order is to be submitted directly to Judge Jonathan E. Karesh, Department 20.

- 4 -

Future Hearings and Vacated Hearings

December 15, 2016 9:00 AM Motion to Compel
 Felise, Lynn
 Courtroom 8C
 Ekhaus, Ruth
 Law and Motion, -

Canceled: February 28, 2017 9:30 AM Mandatory Settlement Conference

Canceled: March 13, 2017 9:00 AM Jury Trial

April 28, 2017 9:30 AM Mandatory Settlement Conference
 Courtroom 2J
 Mandatory Settlement Conferences, -

May 15, 2017 9:00 AM Jury Trial - Courtroom 2D - Master Calendar

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Benjamin H. Klein (#313922)
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5 Of counsel:

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10 kruzer@birnbaumgodkin.com

11 Attorneys for Plaintiff,
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12 limited liability company

13 SUPERIOR COURT OF CALIFORNIA

14 COUNTY OF SAN MATEO

15 SIX4THREE, LLC, a Delaware limited
liability company,

16 Plaintiff,

17 v.

18 FACEBOOK, INC., a Delaware
corporation;
19 MARK ZUCKERBERG, an individual;
CHRISTOPHER COX, an individual;
20 JAVIER OLIVAN, an individual;
SAMUEL LESSIN, an individual;
21 MICHAEL VERNAL, an individual;
ILYA SUKHAR, an individual; and
22 DOES 1 through 50, inclusive,

23 Defendants.
24 _____
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Electronically
FILED

by Superior Court of California, County of San Mateo

ON 5/18/2018

By /s/ Crystal Swords
Deputy Clerk

) Case No. CIV 533328
)
)

) **Assigned For All Purposes To Hon. V.**
) **Raymond Swope, Dept. 23**
)

) **CORRECTED MEMORANDUM OF**
) **POINTS AND AUTHORITIES IN**
) **OPPOSITION TO DEFENDANTS'**
) **SPECIAL MOTIONS TO STRIKE**
) **(ANTI-SLAPP)**

REDACTED FOR PUBLIC FILING

HEARING DATE: July 2, 2018

HEARING TIME: 9:00 a.m.

DEPARTMENT: 23

JUDGE: Hon. V. Raymond Swope

FILING DATE: April 10, 2015

TRIAL DATE: April 25, 2019

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TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
I. ARGUMENT	1
A. The Commercial Speech Exemption Applies	1
B. Plaintiff Is Likely to Prevail On Its Section 17200 Claim	1
C. Plaintiff Is Likely to Prevail On Its Remaining Claims	14
II. CONCLUSION	15

TABLE OF AUTHORITIES

CASES

Page

<i>Daugherty v. American Honda Motor Co., Inc.</i> , (2006) 144 Cal.App.4th 824	13
<i>In re Tobacco II Cases</i> , (2009) 46 Cal.4th 298	13-14
<i>Scripps Clinic v. Superior Court</i> , (2003) 108 Cal.App.4th 917, 940	13
<i>Smith v. State Farm Mutual Automobile Ins. Co.</i> , (2001) 93 Cal.App.4th 700	13

STATUTES

Bus. & Prof. Code, § 16727	13-14
Bus. & Prof. Code, § 17200	1, 13
Cal. Code Civ. Proc. § 425.17	1, 15

OTHER AUTHORITIES

California Civil Jury Instructions (CACI) (2017) No. 303	14
California Civil Jury Instructions (CACI) (2017) No. 1900	14
California Civil Jury Instructions (CACI) (2017) No. 1901	14
California Civil Jury Instructions (CACI) (2017) No. 1903	14
California Civil Jury Instructions (CACI) (2017) No. 2201	15
California Civil Jury Instructions (CACI) (2017) No. 3421	14

1 **I. ARGUMENT**

2 **A. The Commercial Speech Exemption Applies**

3 Plaintiff incorporates the arguments raised in its oppositions to Facebook’s Anti-SLAPP
4 Motion, including the applicability of the commercial speech exemption of Cal. Code Civ. Proc.
5 § 425.17(c) and the unprecedented untimeliness in asserting the Anti-SLAPP argument.¹

6 **B. Plaintiff Is Likely to Prevail on Its Section 17200 Claim**

7 Plaintiff has demonstrated that Zuckerberg and Facebook baited tens of thousands of
8 software companies with specific affirmative representations and partial disclosures of fact from
9 2007 to 2014 to induce them to invest capital and labor in building businesses on Facebook
10 Platform, which was critical to Facebook’s rapid growth from 20 million users in 2007 to over
11 two billion users today, including representations that Facebook Platform would: (1) operate as an
12 open and neutral platform to ensure a level competitive playing field for participating companies
13 (“developers”), both with respect to one another and Facebook; (2) maintain controls and
14 procedures that would ensure user privacy and enable developers who relied upon Facebook
15 Platform to do the same; (3) enforce such policies around user data and privacy in a neutral
16 manner and without regard for the amount of advertising a developer purchased from Facebook;
17 (4) provide an opportunity for companies to build stable businesses; (5) provide equal and neutral
18 access to Facebook’s Graph APIs, including the APIs relied upon by Plaintiff (User ID API, Full
19 Friends List API, Friends Permissions APIs and Newsfeed APIs), while at all times respecting the
20 privacy of user data and the right of a user to own and control her own data; and (6) enable
21 companies to grow their businesses by leveraging Facebook’s graph for organic user growth.²

22 ¹ See Plaintiff’s Opposition to Facebook’s Special Motion to Strike (Anti-SLAPP) filed on
23 December 12, 2017, Plaintiff’s Supplemental Opposition to Facebook’s Special Motion to Strike
24 (Prong 1) filed on January 24, 2018, Plaintiff’s Reply to Defendant’s Supplemental Memorandum
25 in Support of Anti-SLAPP Motion (Prong 1) filed on March 7, 2018, and Plaintiff’s Supplemental
26 Memorandum of Points and Authorities in Opposition to Special Motions to Strike (*Newport Harbor*) filed on May 3, 2018. Declaration of David S. Godkin In Support of Plaintiff’s Request for Judicial Notice (“Jud. Not. Dec.”), ¶¶ 214-217, Exs. 213-216.

27 ² Declaration of David S. Godkin In Opposition to Anti-SLAPP Motions (“Dec.”), ¶ 2, Ex. 1, at
28 82:7-85:20; ¶ 3, Ex. 2, at 45:16-56:08, 75:21-79:20, 167:9-168:20; ¶ 4, Ex. 3, at 32:2-22, 73:7-
74:20, 78:25-81:25; ¶ 5, Ex. 4, at 60:9-61:25; ¶¶ 11-14, Exs. 10-13; ¶ 181, Ex. 181. Jud. Not. Dec.,
¶¶ 3-6, 9, 10, 13, 14, 54-61, 67, 68, 74, 75 (Exs. 2-5, 8, 9, 12, 13, 53-60, 66, 67, 73, 74) (“We’re

1 These affirmative representations and partial disclosures were widely known in the consumer
2 software industry, and because of these statements, many companies decided to build their
3 businesses on Facebook Platform. Dec., ¶ 3, Ex. 2, at 90:6-92:14; ¶ 4, Ex. 3, at 21:1-22, 53:22-
4 54:17; ¶ 7, Ex. 6, 360:2-25; ¶ 76, Ex. 75. Facebook made these representations and partial
5 disclosures with the specific intent to induce companies to rely on Facebook Platform, which
6 greatly benefited Facebook.³ Plaintiff relied on these representations and partial disclosures when
7 deciding to build its business on Facebook Platform. Dec., ¶ 9, Ex. 8, at 115-117; ¶ 10, Ex. 9, at
8 252. At no time did Facebook manage its Platform as a level competitive playing field that
9 respected user privacy; instead, unbeknownst to Plaintiff, Facebook and its senior executives
10 willfully, maliciously and arbitrarily violated these representations and failed to disclose facts that
11 materially undermined them in order to leverage its Platform as a weapon to unjustly enrich
12 Facebook and its senior executives by willfully violating the privacy of Facebook users and
13 architecting a scheme to blame developers for Facebook's own repeated privacy violations.⁴

14 Facebook architected its Platform in a manner designed to violate user privacy as early as
15 2009, which entailed: (1) separating the privacy settings for data a user shared with friends in
16 apps the user downloaded ("user data") with the privacy settings ("Apps Others Use" settings)
17 for data the user shared with friends in apps the friends downloaded ("friend data") (Jud. Not.
18 Dec., ¶ 32, Ex. 31, Federal Trade Commission Complaint, at 4-7); (2) hiding the Apps Others
19 Use settings to ensure most Facebook users were not aware that these settings were distinct from
20 the main privacy settings (*Id.*, at 4-9); (3) making the default setting for sharing data with Apps

21 very optimistic that if you were choosing to develop a service, you would choose to do with us.
22 We really consider ourselves a partnership company. And that means that we want to take social
23 companies and make them big, and big companies and make them social, because we think
24 bringing what Facebook provides, which is your friends, makes every service better" (Sheryl
Sandberg, July 26, 2012 Quarterly Earnings Call, Ex. 57)).

25 ³ Dec., ¶ 2, Ex. 1, at 125:7-130:14, 268:6-272:4; ¶ 3, Ex. 2, at 188:23-189:15; ¶ 4, Ex. 3, at 21:23-
26 22:2, 28:8-22, 40:14-41:14, 59:2-61:4; ¶¶ 15-17, Exs. 14-16. Jud. Not. Dec., ¶¶ 54-61 (Exs. 53-
60).

27 ⁴ Dec., ¶ 3, Ex. 2, at 99:11-120:4, 125:19-131:20; ¶ 18, Ex. 17; ¶ 139, Ex. 138; ¶ 172, Ex. 172; ¶¶
28 177-180, Exs. 177-180; ¶ 188, Ex. 188; ¶ 197, Ex. 197.

1 Others Use set to “on” so Facebook could funnel more data to developers under the guise of user
2 consent (*Id.*, at 7-11); and (4) deliberately failing to pass privacy settings for data transmitted to
3 developers via Facebook’s APIs, signaling to developers that all friend data was public and could
4 be treated as such. Dec., ¶ 117, Ex. 116; ¶¶ 155-157, Exs. 155-157; ¶ 174, Ex. 174; ¶ 191, Ex.
5 191; ¶ 192, Ex. 192; ¶¶ 194-196, Exs. 194-196. Jud. Not. Dec., ¶¶ 29-36, 177 (Exs. 28-35, 176).
6 Facebook did not comply with the FTC Order to eliminate this artificial distinction between
7 “user data” and “friend data” that allowed Facebook to funnel friend data *en masse* to developers
8 without concern for privacy restrictions. To address the FTC Order, all Facebook had to do was:
9 (1) combine the privacy settings for apps downloaded by a user and apps downloaded by the
10 user’s friends in the main privacy page (instead of hiding the Apps Others Use page); (2) change
11 the default data-sharing setting from “on” to “off”; and (3) include the privacy setting of a piece
12 of data when sending that data to developers through its APIs. Instead, Facebook shirked the
13 FTC order by expanding upon its intentionally flawed privacy design more urgently than ever to
14 ensure Facebook had a valuable trading tool that would convince developers to make entirely
15 unrelated purchases in Facebook’s new mobile advertising product, which saved Facebook’s
16 business from collapsing in late 2012 and early 2013. In short, Zuckerberg weaponized the data
17 of one-third of the planet’s population in order to cover up his failure to transition Facebook’s
18 business from desktop computers to mobile ads before the market became aware that Facebook’s
19 financial projections in its 2012 IPO filings were false. Jud. Not. Dec., ¶¶ 37, 82, 96 (Exs. 36, 81,
20 95). The flawed design also enabled Facebook to state in 2014 that a user could not consent to
21 share data with friends in any app other than Facebook – a remarkable claim since Facebook held
22 the exact opposite position for seven years – but one that served as a convenient privacy-focused
23 excuse to eliminate competitors to its new products in video, photo, messaging, contact
24 management, e-commerce, payments, and now dating.⁵

25 Zuckerberg’s scheme made it impossible for Plaintiff’s business and thousands of other
26 businesses to succeed on Facebook Platform and directly resulted in the widely reported scandal
27 in which a developer, Cambridge Analytica, used Facebook data to influence the 2016

28 ⁵ Dec., ¶ 120, Ex. 119; ¶ 133, Ex. 132; ¶ 160, Ex. 160. Jud. Not. Dec., ¶ 53, 201 (Exs. 52, 200).

1 Presidential election allegedly on behalf of the Russian government.⁶ The evidence uncovered by
2 Plaintiff demonstrates that the Cambridge Analytica scandal was not the result of mere
3 negligence on Facebook's part, but was rather the direct consequence of the malicious and
4 fraudulent scheme Zuckerberg designed in 2012 to cover up his failure to anticipate the world's
5 transition to smartphones. This scheme caused so much internal chaos at Facebook [REDACTED]

6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED] Dec., ¶¶ 153, 154.
10 Exs. 153, 154. [REDACTED]

11 [REDACTED] constitutes a far greater abuse than the Cambridge Analytica matter being investigated
12 by federal and state authorities in which 87 million consumers had their data transferred to
13 Russian entities. This conduct implicates the rights of one-third of the world's population, and
14 yet remains shrouded from public view. Jud. Not. Dec., ¶¶ 90, 111 (Exs. 89, 110).

15 At least by 2012, Zuckerberg personally oversaw a practice to weaponize Platform APIs,
16 including a wide range of user and friend data, by inducing companies to rely on this data and
17 then threatening to remove access unless these companies made exorbitant purchases in
18 Facebook's nascent mobile advertising product, known internally as "Neko" ads and publicly as
19 "Mobile App Install" ads. Jud. Not. Dec., ¶¶ 7, 8, 77, 78 (Exs. 6, 7, 76, 77). Zuckerberg
20 blacklisted any companies that refused to buy these Neko ads in exchange for continued access
21 to data that Facebook claimed for years was publicly available at no charge. This blacklisting
22 practice also applied to companies that Zuckerberg in his sole discretion considered competitive
23 with current or future Facebook products, even products Facebook had not yet built, and
24 notwithstanding that most of these developers operated entirely within Facebook's rules.⁷

25 ⁶ Jud. Not. Dec., ¶¶ 24-28, 108, 110, 113, 114, 116, 134, 141, 143, 155, 158, 163, 164, 167-170,
26 175, 176, 181-186, 188, 190, 192, 194-198, 200, 201 (Exs. 23-27, 107, 109, 112, 113, 115, 133,
27 140, 142, 154, 157, 162, 163, 166-169, 174, 175, 180-185, 187, 189, 191, 193-197, 199, 200).

28 ⁷ Dec., ¶ 2, Ex. 1, at 177:14-181:20, 195:18-199:7, 231:25-233:18, 257:20-258:14; ¶ 5, Ex. 4, at
79:14-84:17, 139:13-145:13, 163:1-167:19; ¶¶ 19-26, Exs. 18-25; ¶¶ 42-45 Exs. 41-44; ¶ 165, Ex.

1 Zuckerberg's decision to weaponize a platform economy that Facebook represented for
2 years as open, fair and neutral stemmed from a simple fact that by 2012 had devastating
3 consequences for Facebook: people began accessing the Internet primarily from their phones, but
4 Facebook had built its advertising business for desktop computers, which caused Facebook's
5 revenues and stock price to plummet. Facebook lost over \$200 million in the second and third
6 quarters of 2012 because it had no mobile advertising business.⁸ By mid-2012, Facebook's most
7 senior executives⁹ explored ways to leverage the fact that hundreds of thousands of companies
8 relied on Facebook Platform in order to reboot its business for smartphones, presenting various
9 options for restricting public Platform APIs to its Board of Directors in August 2012, including:

10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]. Dec., ¶¶

18 32-41, Exs. 31-40; ¶ 159, Ex. 159; ¶ 193, Ex. 193. In November 2012, after many months of
19 discussion, Zuckerberg made his final decision to implement a version of the reciprocity policy
20 called "full reciprocity," instead of implementing a public pricing program like Twitter or a
21 revenue share model like the neutral platforms operated by Apple and Google - the top Platform

22 165.

23 ⁸ In mid-2012, mobile advertising accounted for 0% of Facebook's total revenues and yet today, as
24 a direct result of the scheme at the heart of Plaintiff's complaint, mobile advertising makes up
25 approximately 90% of Facebook's total revenues. This has been referred to as one of the most
26 "mindblowing" growth trajectories of any business in history. Dec., ¶¶ 26-31, Exs. 25-30; ¶ 152,
Exs. 151-152. Jud. Not. Dec., ¶¶ 37-43, 56, 58, 62-66, 69-72, 82, 96-98, 178, 197 (Exs. 36-42, 55,
57, 61-65, 68-71, 81, 95-97, 177, 196).

27 ⁹ The executives involved in these discussions in 2011 and 2012 include but are not limited to:
28 Zuckerberg, Olivan, Cox, Lessin, Sandberg, Bosworth, Rose, Ebersman, Wehner, Stretch, Badros
and Fischer. *See, e.g.*, Dec., ¶ 48, Ex. 47 (FB-00917792).

1 executive, Vernal, referred to this decision as [REDACTED] outside Zuckerberg's presence.¹⁰
2 Zuckerberg's full reciprocity policy caused Facebook's privacy and policy apparatus to
3 disintegrate in favor of an arbitrary enforcement environment in which Facebook offered user
4 data, and in particular friend data, to certain developers that were willing to reciprocate with
5 Facebook, typically by agreeing to purchase no less than \$250,000 per year in unrelated Neko
6 ads, while other developers that Facebook considered competitive were blacklisted from
7 accessing this data even though they never broke any rules or violated anyone's privacy.

8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED] Dec., ¶¶ 50-52, Exs. 49-51, Facebook
12 publicly announced an intentionally vague reciprocity policy in January 2013 that refused to
13 define a "competitive" service or "core functionality" in order to mislead companies into
14 thinking that only online social networks (e.g. MySpace, LinkedIn) would be considered
15 competitive; but Facebook's internal definition of a competitive service included virtually every
16 kind of consumer application, including those Facebook explicitly induced in its reciprocity
17 announcement to continue using APIs it had already decided to shut down. Dec., ¶ 53, Ex. 52.
18 Jud. Not. Dec., ¶¶ 10, 11, 12, 73 (Exs. 9, 10, 11, 72).¹¹ This enabled Facebook to use its policies
19 as an excuse to eliminate any developer for any reason whatsoever. Dec., ¶¶ 53-54, Exs. 52-53.

20 ¹⁰ Dec., ¶ 2, Ex. 1, at 136:18-144:7, 148:11-149:16, 151:6-153:10, 168:5-169:1, 177:14-181:20; ¶
21 5, Ex. 4, at 86:4-93:16, 102:7-103:14; ¶¶ 46-52, Exs. 45-51; ¶ 67, Ex. 66; ¶ 173, Ex. 173.

22 ¹¹ Facebook has claimed in two sets of verified discovery responses that it never had a reciprocity
23 policy and that no documents with the term "reciprocity" exist in its files, notwithstanding that its
24 public announcement of the reciprocity policy is readily available on the Internet and Facebook
25 has produced hundreds of emails that discuss this reciprocity policy. Jud. Not. Dec., ¶ 10, Ex. 9
26 (before the announcement of the reciprocity policy, section I.10 of Facebook Platform Policies,
27 part of the adhesion contract Plaintiff entered into with Facebook, stated: "Competing social
28 networks: (a) You may not use Facebook Platform to export user data into a competing social
network"); ¶ 11, Ex. 10 (on January 25, 2013, Facebook announces the reciprocity policy as an
update to section I.10, stating that "the vast majority of developers building social apps" should
"keep doing what you're doing," and that this applies to "music, fitness, news and general lifestyle
apps," but that a "much smaller number of apps" are trying to "replicate our functionality" and
Facebook has "had policies against this that we are further clarifying today," linking to the new

Dec., ¶ 175, Ex. 175.

Dec., ¶ 2, Ex. 1, at 204:12-209:16; ¶¶ 55-57, Exs. 54-56; ¶ 176, Ex. 176.

Dec., ¶ 2, Ex. 1, at 252:2-254:13; ¶ 62, Ex. 61.

I.10 section); ¶ 12, Ex. 11 (the new I.10 section reads: “Reciprocity and Replicating core functionality: (a) Reciprocity: Facebook Platform enables developers to build personalized, social experiences via the Graph API and related APIs. If you use any Facebook APIs to build personalized or social experiences, you must also enable people to easily share their experiences back with people on Facebook. (b) Replicating core functionality: You may not use Facebook Platform to promote, or to export user data to, a product or service that replicates a core Facebook product or service without our permission.”); ¶ 203, Ex. 202, at 4-12 (Facebook’s Supplemental Response to Plaintiff’s Third Demand for Production: “Facebook states that it does not have a ‘data reciprocity policy,’ and no such documents and communications exist” that contain the terms “data reciprocity” or “reciprocity”); ¶ 73, Ex. 72 (media reports on Facebook’s announcement of the reciprocity policy in January 2013).

¹² Dec., ¶ 2, Ex. 1, at 86:4-93:16, 151:6-153:10, 168:5-169:1, 204:12-209:16, 226:2-228:3; ¶ 46, Ex. 45; ¶¶ 58-60, Exs. 57-59.

¹³ Dec., ¶ 4, Ex. 3, at 14:25-15:14, 65:3-25, 70:2-71:13, 82:8-94:1, 96:15-108:16; ¶¶ 60-61, Exs. 59-60; ¶¶ 202-204, Exs. 202-204. Jud. Not. Dec., ¶¶ 14-20, 56, 58 (Exs. 13-19, 55, 57).

1 [REDACTED]
2 Plaintiff would not have built its business on Facebook Platform and Cambridge Analytica
3 would not have used Facebook data to steer the election towards Donald Trump. Put simply,
4 Zuckerberg did not anticipate how quickly people would start using phones to access the
5 Internet, so he took desperate, fraudulent measures to save his failing ads business in 2012.

6 The “full reciprocity” policy was unworkable as an actual policy but was extremely
7 effective as a ‘get out of jail free’ card by giving Facebook: (1) an excuse to threaten to or
8 actually shut down certain developers unless they purchased mobile ads or provided other
9 consideration Facebook deemed valuable in its sole discretion; (2) the ability to blame
10 developers for privacy violations related to data Facebook chose to funnel to developers without
11 any privacy controls; and (3) cover to continue to induce developers to rely on the very APIs
12 Zuckerberg had decided to privatize in 2012 in order to gain more leverage.¹⁴ Under cover of the
13 full reciprocity policy, the Growth team (Olivan) illegally accessed non-public information about
14 competitive applications in order to monitor their popularity and then directed the Platform team
15 (Vernal) to shut down an application once it became widely used.¹⁵ By early 2013, armed with
16 an official reciprocity policy vague enough for Zuckerberg to consider any company a criminal,
17 the initial pay-to-play tests began paying off as Neko ads grew faster than anyone’s wildest
18 expectations. Dec., ¶ 158, Ex. 158; ¶ 164, Ex. 164. In light of this success, [REDACTED]
19 [REDACTED]
20 [REDACTED] Dec., ¶ 75, Ex. 74; ¶¶ 166-167, Ex. 166-167. [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]

24 ¹⁴ Dec., ¶ 2, Ex. 1, at 168:5-169:1, 214:13-217:11, 228:9-232:5; ¶¶ 63-68, Exs. 62-67; ¶¶ 168-171,
25 Ex. 168-171; ¶ 173, Ex. 173.

26 ¹⁵ Olivan accomplished this by monitoring apps installed on the phones of 30 million people who
27 had installed Onavo, a virtual private network app that Facebook bought in 2013; Olivan was able
28 to track highly sensitive information about at least 82,000 software applications as a result of
violating the privacy of these 30 million people. Dec., ¶ 2, Ex. 1, at 52:9-53:12; ¶¶ 69-73, Exs. 68-72; ¶¶ 147-150, Exs. 146-149. Jud. Not. Dec., ¶¶ 100, 139, 142 (Exs. 99, 138, 141).

1 [REDACTED] Dec., ¶ 23, Ex. 22; ¶ 161, Ex. 161. [REDACTED]

2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 Dec., ¶ 74, Ex. 73.¹⁶ [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED] Dec., ¶ 5,

13 Ex. 4, at 191:22-193:14, 222:23-226:16; ¶¶ 76-79, Exs. 75-78.

14 Beginning in September 2013, [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED] Dec., ¶ 5, Ex. 4, at 218:22-

19 219:19; Dec., ¶¶ 80-82, Exs. 79-81; ¶¶ 189-190, Exs. 189-190.¹⁸ By December 2013, [REDACTED]
20 _____

21 ¹⁶ [REDACTED]
22 [REDACTED]
23 Dec., ¶ 5, Ex. 4, at 298:10-306:7.

24 ¹⁷ Dec., ¶ 4, Ex. 3, at 134:13-135:20, 145:03-150:12; Dec., ¶ 6, Ex. 5, at 153:14-154:24, 161:12-177:20; Dec., ¶¶ 75-76, Exs. 74-75.

25 ¹⁸ [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED] Facebook broke Tinder's app as recently as April 2018, and then announced it was building its own dating apps to compete with Tinder on May 1, 2018. Dec., ¶ 85, Ex. 84; ¶ 98, Ex. 97; ¶ 103, Ex. 102; ¶ 190, Ex. 190; ¶ 192, Ex.

Dec., ¶ 83, Exs. 82.

the ones Cambridge Analytica and Russia used to steer the 2016 Presidential election towards Donald Trump). Dec., ¶ 4, Ex. 3, at 187:13-188:16; ¶ 5, Ex. 4, at 183:11-184:16, 227:13-230:22; ¶ 101, Ex. 100. Facebook employees

Dec., ¶ 4, Ex. 3, at 160:06-

162:18; ¶ 81, Ex. 80; ¶ 102, Ex. 101.

Dec., ¶ 10, Ex. 9, at 199:1-206:18; ¶¶ 103-104, Ex. 102-103

Dec., ¶¶ 105-111, Ex. 104-110.

Dec., ¶¶ 112-113, Ex. 111-112.

192; ¶¶ 199-201, Ex. 199-201. Jud. Not. Dec., ¶ 85, 86, 201 (Exs. 84, 85, 200).

¹⁹ Dec., ¶ 4, Ex. 3, at 57:21-58:4, 167:25-178:05, 196:14-199:8, 201:10-203:13, 218:8-219:18; ¶ 5, Ex. 4, at 238:2-242:17, 243:7-252:5; ¶ 7, Ex. 6, at 121:3-127:1, 172:18-176:4; ¶¶ 84-100, Exs. 83-99.

Dec., ¶¶ 115-117, Ex. 114-116; ¶ 212, Ex. 212. In the second half of 2013, [REDACTED]

The fraudulent narrative was known internally as the

160, Ex. 160. Jud. Not. Dec., ¶ 53 (Ex. 52).

11

1 [REDACTED]
2 [REDACTED]
3 [REDACTED] Dec., ¶¶ 131-132, Ex.
4 130-131.²¹ Zuckerberg's April 30, 2014 public announcement of the API restrictions and
5 Facebook's official blog post continued to misrepresent material facts and conceal facts that
6 undermined the facts disclosed, including: (1) concealing the specific APIs being restricted and
7 instead representing falsely that some "rarely used" APIs were being deprecated, [REDACTED]
8 [REDACTED]
9 [REDACTED] Dec., ¶ 4, Ex. 3, at 53:15-21, 61:11-62:13, 207:21-209:12; ¶ 5, Ex. 4,
10 at 25:6-28:25; 119:7-16, 151:21-152:18; Dec., ¶¶ 133-135, Ex. 132-134; ¶ 162-163, Ex. 162-163;
11 (2) [REDACTED]
12 [REDACTED] Dec., ¶ 136, Ex. 135; and (3)
13 [REDACTED] Dec., ¶¶
14 137-138, Ex. 136-137. Facebook's defense that the API restrictions were implemented
15 exclusively to protect user trust and privacy is plainly false as: (1) the Login revamp applied only
16 to apps downloaded by *that user*, whereas the anti-competitive API restrictions applied to apps
17 downloaded by that user's friends; (2) a user already had the ability for many years to control
18 whether their friends could access the user's data in third-party applications, but Facebook hid
19 these controls and set the default to "on" in order to fabricate consent; and (3) [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]; [REDACTED]

25 ²¹ After shutting down many competitive apps, Facebook quickly begins to dominate a wide range
26 of new markets, including video, local commerce, payments, messaging, and much more, such
27 that 4 of the top 5 apps worldwide quickly become Facebook apps and venture capital funding in
28 consumer software startups plummets. Jud. Not. Dec., ¶¶ 76, 79, 89, 99, 102, 105, 106, 109, 112,
117, 118, 120, 128-130, 138, 144-149, 165, 166 (Exs. 75, 78, 88, 98, 101, 104, 105, 108, 111, 116,
117, 119, 127-129, 137, 143-148, 164, 165).

1 [REDACTED]
2 [REDACTED]²² Zuckerberg's
3 2012 scheme to weaponize data as a way of gaining leverage over developers in order to force
4 them to buy mobile ads resulted in countless privacy issues reported by the media, which
5 Facebook remarkably used as cover to shut down developers that had always abided by the
6 rules.²³ In other words, Facebook was able to unjustly enrich itself both from the 2012-2014 pay-
7 to-play scheme that saved its advertising business *and* from the inevitable privacy violations the
8 scheme caused! Facebook reaped the benefits of transitioning its ads business to phones *and*
9 wiping out competition to make room for a wide range of new Facebook products.

10 Plaintiff has demonstrated that defendants' conduct violates all three prongs of Section
11 17200. Defendants' conduct violates the "unfair" prong under any of the three standards as
12 defendants represented a fair and open platform and then enriched themselves by maliciously,
13 unethically, oppressively and punitively operating a closed platform that took advantage of the
14 reasonable reliance of millions of consumers and tens of thousands of companies to their
15 substantial detriment and with no countervailing benefit.²⁴ Defendants' conduct violates the
16 "unlawful" prong as the bait and switch scheme triggers a variety of predicate violations,
17 including common law tort and fraud, California's misrepresentation and concealment statutes,
18 California's false advertising law, and the July 27, 2012 FTC Order directing that defendants'
19 "shall not misrepresent in any manner...the extent to which it maintains the privacy or security
20 of covered information."²⁵ Plaintiff has also met its burden on the "fraud" prong. *See In re*

21 ²² Dec., ¶ 2, Ex. 1, at 64:22-76:10, 120:23-121:18; ¶ 4, Ex. 3, at 94:3-95:12, 123:20-125:08,
22 127:02-127:25, 128:01-128:10, 129:06-131:23; ¶ 139, Ex. 138; ¶ 172, Ex. 172; ¶¶ 177-180, Exs.
23 177-180; ¶ 188, Ex. 188.

24 ²³ Jud. Not. Dec., ¶¶ 23, 76, 79, 87, 88, 100, 101, 104, 107, 115, 116, 123-125 131, 136, 139, 140-
25 143, 153-157, 159-162, 172-174, 179, 180, 189, 193, 199 (Exs. 22, 75, 78, 86, 87, 99, 100, 103,
106, 114, 120, 122-124, 130, 135, 138, 139-142, 152-156, 158-161, 171-173, 178, 179, 188, 192,
198).

26 ²⁴ *See Daugherty v. American Honda Motor Co., Inc.* (2006) 144 Cal.App.4th 824, 839; *Smith v.*
27 *State Farm Mutual Automobile Ins. Co.* (2001) 93 Cal.App.4th 700, 719; *Scripps Clinic v.*
Superior Court (2003) 108 Cal.App.4th 917, 940.

28 ²⁵ Jud. Not. Dec., ¶ 30, Ex. 29, at 3. Further, Zuckerberg's bait and switch scheme violates the
Cartwright Act as Facebook maliciously tied its Platform APIs (the tying product) to its Neko

1 *Tobacco II Cases* (2009) 46 Cal.4th 298, 312. An injunction is required as Facebook still induces
2 developers to build on its Platform by representing it as open and fair and has even extended its
3 Platform to Messenger using the same fraudulent playbook.²⁶

4 **C. Plaintiff Is Likely to Prevail on Its Remaining Claims**

5 Plaintiff has met its burden to prevail on its breach of contract action. CACI (2017) 303.
6 Facebook and Plaintiff entered into a standard adhesion contract, Facebook's December 2012
7 Statement of Rights and Responsibilities (SRR). Dec., ¶ 146, Ex. 145; ¶ 4, Ex. 3, at 35:2-23; ¶ 6,
8 Ex. 5, at 22:17-23:12; ¶ 7, Ex. 6, at 45:4-21, 57:4-63:5. Plaintiff performed all of its obligations.
9 Dec., ¶ 5, Ex. 4, at 17:15-21, 19:1-20:8, 23:15-25:5, 37:19-25. Facebook failed to perform by
10 refusing to provide "all rights to APIs, data and code" that Facebook made available and
11 breached the contract by violating its representations of open, equal and fair access to its APIs
12 that fraudulently induced Plaintiff and others to perform under the contract. Dec., ¶ 146, Ex. 145
13 (Section 9.8); ¶ 5, Ex. 4, at 38:13-40:21; ¶ 7, Ex. 6, at 45:4-21, 219:23-222:1. Plaintiff and many
14 others were harmed, and Facebook's breach was a substantial factor in the harm. Dec., ¶ 8, Ex. 7,
15 at 205:17-25; ¶ 7, Ex. 6, at 67:8-83:3, 98:10-99:4, 103:10-107:24; ¶ 3, Ex. 2, at 121:5-123:11.

16 Plaintiff has met its burden to prevail on its fraud claims. CACI (2017) 1900, 1901, 1903.
17 Defendants made numerous representations of fact to Plaintiff they knew to be false around
18 managing a level competitive playing field while intentionally and systematically tilting that
19 playing field in its favor to the detriment of tens of thousands of startups and small businesses.²⁷

20 advertising product (the tied product), which are entirely unrelated and distinct products. Facebook
21 refused to offer the Platform APIs unless companies purchased Neko advertising. Facebook had
22 sufficient economic power in the market for Platform APIs (it was the sole provider of these APIs)
23 to coerce companies into purchasing Neko advertising, and the tying arrangement prohibited an
24 estimated 40,000 companies from purchasing advertising (the tied product) as they no longer had
products to advertise. CACI (2017) 3421 (Bus. & Prof. Code, § 16727); Dec., ¶¶ 140-144, Ex. 139-143.

25 ²⁶ Dec., ¶ 6, Ex. 5, at 26:1-29:4, 42:17-45:10; ¶ 145, Ex. 144; ¶¶ 183-186, Ex. 183-186. Jud. Not.
26 Dec., ¶¶ 2, 21, 22, 80, 81, 83-86, 91-94, 103, 119, 122, 126, 127, 132, 133, 137, 138, 150-152, 171
(Exs. 1, 20, 21, 79, 80, 82-85, 90-93, 102, 118, 121, 125, 126, 131, 132, 136, 137, 149-151, 170).

27 ²⁷ Dec., ¶¶ 11-14, Exs. 10-13; ¶ 2, Ex. 1, at 82:7-85:20, 177:14-181:20, 195:18-199:7, 231:25-
28 233:18, 257:20-258:14; ¶ 3, Ex. 2, at 45:16-56:08, 75:21-79:20, 99:11-120:4, 125:19-131:20,
167:9-168:20; ¶ 4, Ex. 3, at 32:2-22, 73:7-74:20, 78:25-81:25; ¶ 5, Ex. 4, at 60:9-61:25.

1 Defendants intended that Plaintiff rely on the representations.²⁸ Plaintiff reasonably relied on the
2 representations.²⁹ Further, Facebook and Plaintiff were in a business relationship.³⁰ Facebook
3 disclosed some facts but intentionally failed to disclose others known only to Facebook while
4 preventing Plaintiff from discovering certain facts.³¹ Plaintiff did not know the concealing facts
5 and if they had been disclosed, Plaintiff would not have built its business on Facebook Platform.
6 Dec., ¶ 8, Ex. 7, at 162:13-163:16, 223:6-15. Plaintiff was harmed by this conduct.³²

7 Plaintiff has met its burden to prevail on its intentional tort action. CACI (2017) 2201.
8 Plaintiff maintained contracts with its users. Dec., ¶ 8, Ex. 7, at 181:23-183:9, 195:25-196:16.
9 Facebook knew of these contracts as its SRR required them. Dec., ¶ 6, Ex. 5, at 49:18-50:5.
10 Facebook knew it would disrupt and intended to disrupt Plaintiff's contracts because Plaintiff
11 was included in the list of 40,000 apps audited in 2013 and 2014 that would break as a result of
12 Zuckerberg's scheme. Dec., ¶ 6, Ex. 5, at 174:7-177:20; Dec., ¶ 4, Ex. 3, at 55:21-56:17, 122:14-
13 123:06, 231:18-233:24; Dec., ¶ 7, Ex. 6, at 108:1-111:13. Facebook's conduct prevented
14 Plaintiff from performing in its contracts with its users. Dec., ¶ 8, Ex. 7, at 162:13-163:16, 223:6-
15 15. Plaintiff was harmed by this conduct. Dec., ¶ 8, Ex. 7, at 205:17-25; ¶ 10, Ex. 9, at 269:5-25.

16 **II. CONCLUSION**

17 For the foregoing reasons, Defendants' Anti-SLAPP Motions should be denied on the
18 grounds of Cal. Code Civ. Proc. § 425.17 to ensure Facebook cannot further stay discovery and
19 jeopardize the trial date once again by appealing the Court's Order.

20 ²⁸ Dec., ¶ 2, Ex. 1, at 125:7-130:14, 268:6-272:4; ¶ 3, Ex. 2, at 188:23-189:15; ¶ 4, Ex. 3, at 14:25-
21 15:14, 21:23-22:2, 28:8-22, 40:14-41:14, 59:2-61:4, 65:3-25, 70:2-71:13, 82:8-94:1, 96:15-
22 108:16; ¶¶ 15-17, Exs. 14-16; ¶¶ 60-61, Exs. 59-60.

23 ²⁹ Dec., ¶ 3, Ex. 2, at 90:6-92:14; ¶ 4, Ex. 3, at 21:1-22, 53:22-54:17; ¶ 7, Ex. 6, 360:2-25; ¶ 9, Ex.
24 8, at 115-117; ¶ 10, Ex. 9, at 252.

25 ³⁰ Dec., ¶ 146, Ex. 145; ¶ 4, Ex. 3, at 35:2-23; ¶ 6, Ex. 5, at 22:17-23:12; ¶ 7, Ex. 6, at 45:4-21, 57:4-
26 63:5.

27 ³¹ Dec., ¶ 2, Ex. 1, at 204:12-209:16; ¶ 4, Ex. 3, at 14:25-15:14, 21:23-22:2, 28:8-22, 40:14-41:14,
28 59:2-61:4, 65:3-25, 70:2-71:13, 82:8-94:1, 96:15-108:16; Dec., ¶¶ 53-57, Exs. 52-56.

³² Dec., ¶ 8, Ex. 7, at 205:17-25; ¶ 10, Ex. 9, at 199:1-201:1, 252, 269:5-25.

1 DATED: May 18, 2018

GROSS & KLEIN LLP

2 BIRNBAUM & GODKIN, LLP

3
4 By: /s/ David. S. Godkin

5 Stuart G. Gross, Esq.

6 David S. Godkin (admitted *pro hac vice*)

7 James E. Kruzer (admitted *pro hac vice*)

8 Attorneys for Plaintiff

9 Six4Three, LLC

1 **PROOF OF SERVICE**

2 I, Cheryl A. McDuffee, declare:

3 I am a citizen of the United States and employed in Suffolk County, Massachusetts. I am
4 over the age of eighteen years and not a party to the within-entitled action. My business address
5 is 280 Summer Street, Boston, MA 02210. On May 18, 2018, I served a copy of the within
6 document(s):

7 **MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO**
8 **DEFENDANTS' SPECIAL MOTIONS TO STRIKE**

9 ☒ by electronic service, per the agreement of the parties, by emailing a true and
10 correct copy through counsel's email address to Defendant's counsel of record at
the email addresses set forth below.

11 Joshua H. Lerner (jlerner@durietangri.com)
12 Sonal N. Mehta (smehta@durietangri.com)
13 Laura Miller (lmiller@durietangri.com)
14 Catherine Kim (ckim@durietangri.com)
15 Durie Tangri (service-six4three@durietangri.com)
217 Leidesdorff Street
16 San Francisco, CA 94111
17 P (415) 376 - 6427
Attorney for Defendant
FACEBOOK, INC.

18 and

19 Judge V. Raymond Swope (By hand)
20 Department 23
Complex Civil Litigation

21 I declare under penalty of perjury under the laws of the State of California that the above
22 is true and correct.

23 Executed May 18, 2018, at Boston, Massachusetts.

24
25
26 /s/ Cheryl A. McDuffee

27 _____
Cheryl A. McDuffee

EXHIBIT 33

DURIE TANGRI LLP
SONAL N. MEHTA (SBN 222086)
smehta@durietangri.com
JOSHUA H. LERNER (SBN 220755)
jlerner@durietangri.com
LAURA E. MILLER (SBN 271713)
lmiller@durietangri.com
CATHERINE Y. KIM (SBN 308442)
ckim@durietangri.com
217 Leidesdorff Street
San Francisco, CA 94111
Telephone: 415-362-6666
Facsimile: 415-236-6300

Attorneys for Defendants
Facebook, Inc., Mark Zuckerberg, Christopher Cox, Javier
Olivan, Samuel Lessin, Michael Vernal, and Ilya Sukhar

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO

SIX4THREE, LLC, a Delaware limited liability
company,

Plaintiff,

v.

FACEBOOK, INC., a Delaware corporation;
MARK ZUCKERBERG, an individual;
CHRISTOPHER COX, an individual;
JAVIER OLIVAN, an individual;
SAMUEL LESSIN, an individual;
MICHAEL VERNAL, an individual;
ILYA SUKHAR, an individual; and
DOES 1-50, inclusive,

Defendants.

Case No. CIV 533328

**Assigned for all purposes to Hon. V. Raymond
Swope, Dept. 23**

**NOTICE OF DEPOSITION OF THEODORE
KRAMER AND REQUEST FOR
PRODUCTION OF DOCUMENTS**

Dept: 23 (Complex Civil Litigation)
Judge: Honorable V. Raymond Swope

FILING DATE: April 10, 2015
TRIAL DATE: April 25, 2019

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that, pursuant to Section 2025.010 of the California Code of Civil
3 Procedure, Defendant Facebook, Inc. ("Facebook") by and through its attorneys, will take the deposition
4 of Theodore Kramer on December 5, 2018, at the offices of Durie Tangri LLP located at 217 Leidesdorff
5 Street, San Francisco, California 94111, beginning at 9:00 a.m. PST, or on such other date, time or place
6 as the parties mutually agree.

7 **PLEASE TAKE FURTHER NOTICE** that said deposition will be taken upon oral examination
8 before a Notary Public for the State of California, or such other person authorized to administer oaths,
9 and shall continue from day to day until completed. It will be recorded by stenographic means and will
10 also be recorded by sound-and-visual means, including videotape. Facebook reserves the right to use this
11 audiotape and videotape deposition at the time of trial.

12 **PLEASE TAKE FURTHER NOTICE** that, pursuant to Section 2025.220(a)(4) of the
13 California Code of Civil Procedure that Mr. Kramer shall prior to his deposition, and no later than
14 December 5, 2018, produce the documents described as follows:

15 **REQUEST FOR PRODUCTION NO. 1:**

16 Documents (e.g., phone logs) sufficient to show all telephonic and/or video conference
17 communications between Six4Three, including without limitation Theodore Kramer, Thomas
18 Scaramellino, David Godkin, James Kruzer, Stuart Gross, and any other agent or representative of
19 Six4Three, and any individual or entity regarding Facebook's anti-SLAPP motion, Six4Three's
20 opposition to Facebook's anti-SLAPP motion, the Godkin Declaration in support of Six4Three's
21 opposition to Facebook's anti-SLAPP motion ("Godkin Declaration") or exhibits thereto, or other
22 Facebook confidential information. For the avoidance of doubt, this includes but is not limited to media
23 organizations and governmental entities, including the Digital, Culture, Media and Sport Committee of
24 the House of Commons ("DCMS Committee").

25 **REQUEST FOR PRODUCTION NO. 2:**

26 All communications between Six4Three, including without limitation Theodore Kramer, Thomas
27 Scaramellino, David Godkin, James Kruzer, Stuart Gross, and any other agent or representative of
28 Six4Three, and any third party individual or entity regarding Facebook's anti-SLAPP motion,

1 Six4Three's opposition to Facebook's anti-SLAPP motion, the Godkin Declaration or exhibits thereto, or
2 other Facebook confidential information. For the avoidance of doubt, this includes but is not limited to
3 media organizations and governmental entities, including the Digital, Culture, Media and Sport
4 Committee of the House of Commons ("DCMS Committee").

5 **REQUEST FOR PRODUCTION NO. 3:**

6 Documents sufficient to show the identity of all individuals or entities with whom Theodore
7 Kramer, Thomas Scaramellino, David Godkin, James Kruzer, and Stuart Gross, or any other agent or
8 representative of Six4Three, discussed Facebook's anti-SLAPP motion, Six4Three's opposition to
9 Facebook's anti-SLAPP motion, the Godkin Declaration or exhibits thereto, or other Facebook
10 confidential information.

11 **REQUEST FOR PRODUCTION NO. 4:**

12 All emails and attachments exchanged between Mr. Kramer and Damian Collins.

13 **REQUEST FOR PRODUCTION NO. 5:**

14 All logs or other records pertaining to the Six4Three Dropbox account that Mr. Kramer accessed
15 from his laptop, including all available or recoverable information about what documents were uploaded
16 to the account and by whom, what documents were downloaded from the account and by whom, what
17 documents were deleted from the account and by whom, when the account was cached or synched locally
18 and on what devices, and all individuals that had access to the account and when.

19 **REQUEST FOR PRODUCTION NO. 6:**

20 All emails or other communications amongst and between Mr. Gross or anyone at Gross & Klein,
21 Mr. Godkin or anyone at Birnbaum & Godkin, Mr. Kramer, Mr. Scaramellino or any other agent,
22 attorney, or individual associated with Six4Three from May 1, 2018 to the present regarding Facebook's
23 anti-SLAPP motion, Six4Three's opposition to Facebook's anti-SLAPP motion, the Godkin Declaration
24 or exhibits thereto, or other Facebook's confidential or highly confidential information. For avoidance of
25 doubt, this would include without limitation communications relating to contacts with the DCMS
26 Committee, *The Guardian*, *The Observer*, or other third parties.

1 Dated: November 30, 2018

DURIE TANGRI LLP

2
3 By: _____



SONAL N. MEHTA
JOSHUA H. LERNER
LAURA E. MILLER
CATHERINE Y. KIM

4
5
6 Attorneys for Defendants
7 Facebook, Inc., Mark Zuckerberg, Christopher Cox,
8 Javier Olivan, Samuel Lessin, Michael Vernal, and Ilya
9 Sukhar
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1 **PROOF OF SERVICE**

2 I am a citizen of the United States and resident of the State of California. I am employed in San
3 Francisco County, State of California, in the office of a member of the bar of this Court, at whose
4 direction the service was made. I am over the age of eighteen years, and not a party to the within action.
5 My business address is 217 Leidesdorff Street, San Francisco, CA 94111.

6 On November 30, 2018, I served the following documents in the manner described below:

7 **NOTICE OF DEPOSITION OF THEODORE KRAMER AND REQUEST FOR**
8 **PRODUCTION OF DOCUMENTS**

9 ☒ BY ELECTRONIC SERVICE: By electronically mailing a true and correct copy through
10 Durie Tangri's electronic mail system from smehta@durietangri.com to the email
addresses set forth below.

11 ☐ (BY PERSONAL DELIVERY) I caused such envelope to be delivered by hand to the
12 offices of each addressee below.

13 On the following part(ies) in this action:

14 Stuart G. Gross
15 GROSS & KLEIN LLP
16 The Embarcadero, Pier 9, Suite 100
17 San Francisco, CA 94111
18 Telephone: 415-671-4628
19 sgross@grosskleinlaw.com
20 iatkinsonyoung@grosskleinlaw.com

21 David S. Godkin
22 James Kruzer
23 BIRNBAUM & GODKIN, LLP
24 280 Summer Street
25 Boston, MA 02210
26 Telephone: 617-307-6100
27 godkin@birnbaumgodkin.com
28 kruzer@birnbaumgodkin.com

Attorneys for Plaintiff
Six4Three, LLC

I declare under penalty of perjury under the laws of the United States of America that the
foregoing is true and correct. Executed on November 30, 2018, at Redwood City, California.



EXHIBIT 34

DURIE TANGRI LLP
SONAL N. MEHTA (SBN 222086)
smehta@durietangri.com
JOSHUA H. LERNER (SBN 220755)
jlerner@durietangri.com
LAURA E. MILLER (SBN 271713)
lmiller@durietangri.com
CATHERINE Y. KIM (SBN 308442)
ckim@durietangri.com
217 Leidesdorff Street
San Francisco, CA 94111
Telephone: 415-362-6666
Facsimile: 415-236-6300

Attorneys for Defendants
Facebook, Inc., Mark Zuckerberg, Christopher Cox, Javier
Olivan, Samuel Lessin, Michael Vernal, and Ilya Sukhar

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO

SIX4THREE, LLC, a Delaware limited liability
company,

Plaintiff,

v.

FACEBOOK, INC., a Delaware corporation;
MARK ZUCKERBERG, an individual;
CHRISTOPHER COX, an individual;
JAVIER OLIVAN, an individual;
SAMUEL LESSIN, an individual;
MICHAEL VERNAL, an individual;
ILYA SUKHAR, an individual; and
DOES 1-50, inclusive,

Defendants.

Case No. CIV 533328

**Assigned for all purposes to Hon. V. Raymond
Swope, Dept. 23**

**NOTICE OF DEPOSITION OF THOMAS
SCARAMELLINO AND REQUEST FOR
PRODUCTION OF DOCUMENTS**

Dept: 23 (Complex Civil Litigation)
Judge: Honorable V. Raymond Swope

FILING DATE: April 10, 2015
TRIAL DATE: April 25, 2019

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that, pursuant to Section 2025.010 and 2029.100 *et seq.* of the
3 California Code of Civil Procedure, Defendant Facebook, Inc. (“Facebook”) by and through its attorneys,
4 will take the deposition of Thomas Scaramellino on December 5, 2018, at the offices of Durie Tangri
5 LLP located at 217 Leidesdorff Street, San Francisco, California 94111, beginning at 9:00 a.m. PST, or
6 on such other date, time or place as the parties mutually agree, pursuant to the Deposition Subpoena for
7 Personal Appearance and Production of Documents and Things, a true and correct copy of which is
8 attached hereto as Exhibit A.

9 **PLEASE TAKE FURTHER NOTICE** that said deposition will be taken upon oral examination
10 before a Notary Public for the State of California, or such other person authorized to administer oaths,
11 and shall continue from day to day until completed. It will be recorded by stenographic means and will
12 also be recorded by sound-and-visual means, including videotape. Facebook reserves the right to use this
13 audiotape and videotape deposition at the time of trial.

14 **PLEASE TAKE FURTHER NOTICE** that, pursuant to Section 2025.220(a)(4) of the
15 California Code of Civil Procedure that Mr. Scaramellino shall prior to his deposition, and no later than
16 December 5, 2018, produce the documents described as follows:

17 **REQUESTS FOR PRODUCTION**

18 **REQUEST FOR PRODUCTION NO. 1:**

19 Documents (e.g., phone logs) sufficient to show all telephonic and/or video conference
20 communications between Six4Three, including without limitation Theodore Kramer, Thomas
21 Scaramellino, David Godkin, James Kruzer, Stuart Gross, and any other agent or representative of
22 Six4Three, and any individual or entity regarding Facebook’s anti-SLAPP motion, Six4Three’s
23 opposition to Facebook’s anti-SLAPP motion, the Godkin Declaration in support of Six4Three’s
24 opposition to Facebook’s anti-SLAPP motion (“Godkin Declaration”) or exhibits thereto, or other
25 Facebook confidential information. For the avoidance of doubt, this includes but is not limited to media
26 organizations and governmental entities, including the Digital, Culture, Media and Sport Committee of
27 the House of Commons (“DCMS Committee”).

28 **REQUEST FOR PRODUCTION NO. 2:**

1 All communications between Six4Three, including without limitation Theodore Kramer, Thomas
2 Scaramellino, David Godkin, James Kruzer, Stuart Gross, and any other agent or representative of
3 Six4Three, and any third party individual or entity regarding Facebook's anti-SLAPP motion,
4 Six4Three's opposition to Facebook's anti-SLAPP motion, the Godkin Declaration or exhibits thereto, or
5 other Facebook confidential information. For the avoidance of doubt, this includes but is not limited to
6 media organizations and governmental entities, including the Digital, Culture, Media and Sport
7 Committee of the House of Commons ("DCMS Committee").

8 **REQUEST FOR PRODUCTION NO. 3:**

9 Documents sufficient to show the identity of all individuals or entities with whom Theodore
10 Kramer, Thomas Scaramellino, David Godkin, James Kruzer, and Stuart Gross, or any other agent or
11 representative of Six4Three, discussed Facebook's anti-SLAPP motion, Six4Three's opposition to
12 Facebook's anti-SLAPP motion, the Godkin Declaration or exhibits thereto, or other Facebook
13 confidential information.

14 **REQUEST FOR PRODUCTION NO. 4:**

15 All emails and attachments exchanged between Mr. Kramer and Damian Collins.

16 **REQUEST FOR PRODUCTION NO. 5:**

17 All logs or other records pertaining to the Six4Three Dropbox account that Mr. Kramer accessed
18 from his laptop, including all available or recoverable information about what documents were uploaded
19 to the account and by whom, what documents were downloaded from the account and by whom, what
20 documents were deleted from the account and by whom, when the account was cached or synched locally
21 and on what devices, and all individuals that had access to the account and when.

22 **REQUEST FOR PRODUCTION NO. 6:**

23 All emails or other communications amongst and between Mr. Gross or anyone at Gross & Klein,
24 Mr. Godkin or anyone at Birnbaum & Godkin, Mr. Kramer, Mr. Scaramellino or any other agent,
25 attorney, or individual associated with Six4Three from May 1, 2018 to the present regarding Facebook's
26 anti-SLAPP motion, Six4Three's opposition to Facebook's anti-SLAPP motion, the Godkin Declaration
27 or exhibits thereto, or other Facebook's confidential or highly confidential information. For avoidance of
28 doubt, this would include without limitation communications relating to contacts with the DCMS

1 Committee, *The Guardian*, *The Observer*, or other third parties.

2
3
4 Dated: November 30, 2018

DURIE TANGRI LLP

5
6 By: _____



SONAL N. MEHTA
JOSHUA H. LERNER
LAURA E. MILLER
CATHERINE Y. KIM

7
8 Attorneys for Defendants
9 Facebook, Inc., Mark Zuckerberg, Christopher Cox,
10 Javier Olivan, Samuel Lessin, Michael Vernal, and Ilya
11 Sukhar
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1 **PROOF OF SERVICE**

2 I am a citizen of the United States and resident of the State of California. I am employed in San
3 Francisco County, State of California, in the office of a member of the bar of this Court, at whose
4 direction the service was made. I am over the age of eighteen years, and not a party to the within action.
5 My business address is 217 Leidesdorff Street, San Francisco, CA 94111.

6 On November 30, 2018, I served the following documents in the manner described below:

7 **NOTICE OF DEPOSITION OF THOMAS SCARAMELLINO AND REQUEST FOR**
8 **PRODUCTION OF DOCUMENTS**

9 ☒ BY ELECTRONIC SERVICE: By electronically mailing a true and correct copy through
10 Durie Tangri's electronic mail system from smehta@durietangri.com to the email
addresses set forth below.

11 ☐ (BY PERSONAL DELIVERY) I caused such envelope to be delivered by hand to the
12 offices of each addressee below.

13 On the following part(ies) in this action:

14 Stuart G. Gross
15 GROSS & KLEIN LLP
16 The Embarcadero, Pier 9, Suite 100
17 San Francisco, CA 94111
18 Telephone: 415-671-4628
19 sgross@grosskleinlaw.com
20 iatkinsonyoung@grosskleinlaw.com

21 David S. Godkin
22 James Kruzer
23 BIRNBAUM & GODKIN, LLP
24 280 Summer Street
25 Boston, MA 02210
26 Telephone: 617-307-6100
27 godkin@birnbaumgodkin.com
28 kruzer@birnbaumgodkin.com

Attorneys for Plaintiff
Six4Three, LLC

I declare under penalty of perjury under the laws of the United States of America that the
foregoing is true and correct. Executed on November 30, 2018, at Redwood City, California.

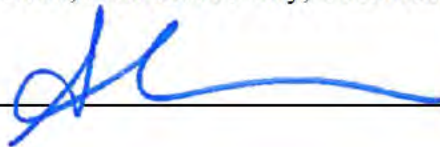


Exhibit A

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): DURIE TANGRI LLP, Sonal N. Mehta (SBN 222086), Laura E. Miller (SBN 271713), Catherine Y. Kim (SBN 308442) 217 Leidesdorff Street, San Francisco, CA 94111 TELEPHONE NO.: 415-362-6666 FAX NO. (Optional): 415-236-6300 E-MAIL ADDRESS (Optional): SERVICE-SIX4THREE@durietangri.com ATTORNEY FOR (Name): Defendant Facebook, Inc.	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Mateo STREET ADDRESS: 400 County Center, Redwood City, CA 94063 MAILING ADDRESS: 400 County Center CITY AND ZIP CODE: Redwood City, CA 94063 BRANCH NAME: Southern Branch: Hall of Justice and Records	
PLAINTIFF/PETITIONER: Six4Three, LLC DEFENDANT/RESPONDENT: Facebook, Inc.	
DEPOSITION SUBPOENA FOR PERSONAL APPEARANCE AND PRODUCTION OF DOCUMENTS AND THINGS	CASE NUMBER: CIV 533328

THE PEOPLE OF THE STATE OF CALIFORNIA, TO (name, address, and telephone number of deponent, if known):
 Thomas Scaramellino, c/o Birnbaum & Godkin, LLP, 280 Summer Street, Boston, MA 02210-1108

1. YOU ARE ORDERED TO APPEAR IN PERSON TO TESTIFY AS A WITNESS in this action at the following date, time, and place:

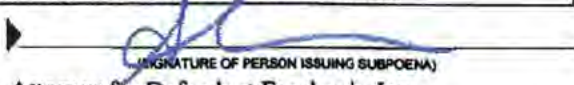
Date: Dec. 5, 2018 Time: 9:00 a.m. Address: Durie Tangri LLP, 217 Leidesdorff St., SF, CA 94111

- a. ☐ As a deponent who is not a natural person, you are ordered to designate one or more persons to testify on your behalf as to the matters described in item 4. (Code Civ. Proc., § 2025.230.)
- b. ☒ You are ordered to produce the documents and things described in item 3.
- c. ☒ This deposition will be recorded stenographically ☒ through the instant visual display of testimony and by ☐ audiotape ☒ videotape.
- d. ☒ This videotape deposition is intended for possible use at trial under Code of Civil Procedure section 2025.620(d).
2. The personal attendance of the custodian or other qualified witness and the production of the original records are required by this subpoena. The procedure authorized by Evidence Code sections 1560(b), 1561, and 1562 will not be deemed sufficient compliance with this subpoena.
3. The documents and things to be produced and any testing or sampling being sought are described as follows:
 See Attachment 3.
- ☒ Continued on Attachment 3.
4. If the witness is a representative of a business or other entity, the matters upon which the witness is to be examined are described as follows:
 n/a
- ☐ Continued on Attachment 4.
5. IF YOU HAVE BEEN SERVED WITH THIS SUBPOENA AS A CUSTODIAN OF CONSUMER OR EMPLOYEE RECORDS UNDER CODE OF CIVIL PROCEDURE SECTION 1985.3 OR 1985.6 AND A MOTION TO QUASH OR AN OBJECTION HAS BEEN SERVED ON YOU, A COURT ORDER OR AGREEMENT OF THE PARTIES, WITNESSES, AND CONSUMER OR EMPLOYEE AFFECTED MUST BE OBTAINED BEFORE YOU ARE REQUIRED TO PRODUCE CONSUMER OR EMPLOYEE RECORDS.
6. At the deposition, you will be asked questions under oath. Questions and answers are recorded stenographically at the deposition; later they are transcribed for possible use at trial. You may read the written record and change any incorrect answers before you sign the deposition. You are entitled to receive witness fees and mileage actually traveled both ways. The money must be paid, at the option of the party giving notice of the deposition, either with service of this subpoena or at the time of the deposition. Unless the court orders or you agree otherwise, if you are being deposed as an individual, the deposition must take place within 75 miles of your residence or within 150 miles of your residence if the deposition will be taken within the county of the court where the action is pending. The location of the deposition for all deponents is governed by Code of Civil Procedure section 2025.250.

DISOBEDIENCE OF THIS SUBPOENA MAY BE PUNISHED AS CONTEMPT BY THIS COURT. YOU WILL ALSO BE LIABLE FOR THE SUM OF \$500 AND ALL DAMAGES RESULTING FROM YOUR FAILURE TO OBEY.

Date issued: 11/30/2018

Sonal N. Mehta


 (SIGNATURE OF PERSON ISSUING SUBPOENA)
 Attorney for Defendant Facebook, Inc.

PLAINTIFF/PETITIONER: Six4Three, LLC	CASE NUMBER:
DEFENDANT/RESPONDENT: Facebook, Inc.	CIV 533328

**PROOF OF SERVICE OF DEPOSITION SUBPOENA FOR PERSONAL APPEARANCE
AND PRODUCTION OF DOCUMENTS AND THINGS**

1. I served this *Deposition Subpoena for Personal Appearance and Production of Documents and Things* by personally delivering a copy to the person served as follows:
 - a. Person served (name):
 - b. Address where served:
 - c. Date of delivery:
 - d. Time of delivery:
 - e. Witness fees and mileage both ways (*check one*):
 - (1) ☐ were paid. Amount: \$ _____
 - (2) ☐ were not paid.
 - (3) ☐ were tendered to the witness's public entity employer as required by Government Code section 68097.2. The amount tendered was (*specify*): \$ _____
 - f. Fee for service: \$ _____
2. I received this subpoena for service on (*date*):
3. Person serving:
 - a. ☐ Not a registered California process server
 - b. ☐ California sheriff or marshal
 - c. ☐ Registered California process server
 - d. ☐ Employee or independent contractor of a registered California process server
 - e. ☐ Exempt from registration under Business and Professions Code section 22350(b)
 - f. ☐ Registered professional photocopier
 - g. ☐ Exempt from registration under Business and Professions Code section 22451
 - h. Name, address, telephone number, and, if applicable, county of registration and number:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. (For California sheriff or marshal use only)
I certify that the foregoing is true and correct.

Date:

Date:

(SIGNATURE)

(SIGNATURE)

ATTACHMENT 3 TO DEPOSITION SUBPOENA FOR PERSONAL APPEARANCE
AND PRODUCTION OF DOCUMENTS AND THINGS

REQUEST FOR PRODUCTION NO. 1:

Documents (e.g., phone logs) sufficient to show all telephonic and/or video conference communications between Six4Three, including without limitation Theodore Kramer, Thomas Scaramellino, David Godkin, James Kruzer, Stuart Gross, and any other agent or representative of Six4Three, and any individual or entity regarding Facebook's anti-SLAPP motion, Six4Three's opposition to Facebook's anti-SLAPP motion, the Godkin Declaration in support of Six4Three's opposition to Facebook's anti-SLAPP motion ("Godkin Declaration") or exhibits thereto, or other Facebook confidential information. For the avoidance of doubt, this includes but is not limited to media organizations and governmental entities, including the Digital, Culture, Media and Sport Committee of the House of Commons ("DCMS Committee").

REQUEST FOR PRODUCTION NO. 2:

All communications between Six4Three, including without limitation Theodore Kramer, Thomas Scaramellino, David Godkin, James Kruzer, Stuart Gross, and any other agent or representative of Six4Three, and any third party individual or entity regarding Facebook's anti-SLAPP motion, Six4Three's opposition to Facebook's anti-SLAPP motion, the Godkin Declaration or exhibits thereto, or other Facebook confidential information. For the avoidance of doubt, this includes but is not limited to media organizations and governmental entities, including the Digital, Culture, Media and Sport Committee of the House of Commons ("DCMS Committee").

REQUEST FOR PRODUCTION NO. 3:

Documents sufficient to show the identity of all individuals or entities with whom Theodore Kramer, Thomas Scaramellino, David Godkin, James Kruzer, and Stuart Gross, or any other agent or representative of Six4Three, discussed Facebook's anti-SLAPP motion, Six4Three's opposition to Facebook's anti-SLAPP motion, the Godkin Declaration or exhibits thereto, or other Facebook confidential information.

REQUEST FOR PRODUCTION NO. 4:

All emails and attachments exchanged between Mr. Kramer and Damian Collins.

REQUEST FOR PRODUCTION NO. 5:

All logs or other records pertaining to the Six4Three Dropbox account that Mr. Kramer accessed from his laptop, including all available or recoverable information about what documents were uploaded to the account and by whom, what documents were downloaded from the account and by whom, what documents were deleted from the account and by whom, when the account was cached or synched locally and on what devices, and all individuals that had access to the account and when.

REQUEST FOR PRODUCTION NO. 6:

All emails or other communications amongst and between Mr. Gross or anyone at Gross & Klein, Mr. Godkin or anyone at Birnbaum & Godkin, Mr. Kramer, Mr. Scaramellino or any other agent, attorney, or individual associated with Six4Three from May 1, 2018 to the present regarding Facebook's anti-SLAPP motion, Six4Three's opposition to Facebook's anti-SLAPP motion, the Godkin Declaration or exhibits thereto, or other Facebook's confidential or highly confidential information. For avoidance of doubt, this would include without limitation communications relating to contacts with the DCMS Committee, *The Guardian*, *The Observer*, or other third parties.

EXHIBIT 35

DURIE TANGRI LLP
SONAL N. MEHTA (SBN 222086)
smehta@durietangri.com
JOSHUA H. LERNER (SBN 220755)
jlerner@durietangri.com
LAURA E. MILLER (SBN 271713)
lmiller@durietangri.com
CATHERINE Y. KIM (SBN 308442)
ckim@durietangri.com
217 Leidesdorff Street
San Francisco, CA 94111
Telephone: 415-362-6666
Facsimile: 415-236-6300

Attorneys for Defendants
Facebook, Inc., Mark Zuckerberg, Christopher Cox, Javier
Olivan, Samuel Lessin, Michael Vernal, and Ilya Sukhar

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO

SIX4THREE, LLC, a Delaware limited liability
company,

Plaintiff,

v.

FACEBOOK, INC., a Delaware corporation;
MARK ZUCKERBERG, an individual;
CHRISTOPHER COX, an individual;
JAVIER OLIVAN, an individual;
SAMUEL LESSIN, an individual;
MICHAEL VERNAL, an individual;
ILYA SUKHAR, an individual; and
DOES 1-50, inclusive,

Defendants.

Case No. CIV 533328

**Assigned for all purposes to Hon. V. Raymond
Swope, Dept. 23**

**NOTICE OF DEPOSITION OF DAVID
GODKIN AND REQUEST FOR
PRODUCTION OF DOCUMENTS**

Dept: 23 (Complex Civil Litigation)
Judge: Honorable V. Raymond Swope

FILING DATE: April 10, 2015
TRIAL DATE: April 25, 2019

1 Six4Three, and any third party individual or entity regarding Facebook's anti-SLAPP motion,
2 Six4Three's opposition to Facebook's anti-SLAPP motion, the Godkin Declaration or exhibits thereto, or
3 other Facebook confidential information. For the avoidance of doubt, this includes but is not limited to
4 media organizations and governmental entities, including the Digital, Culture, Media and Sport
5 Committee of the House of Commons ("DCMS Committee").

6 **REQUEST FOR PRODUCTION NO. 3:**

7 Documents sufficient to show the identity of all individuals or entities with whom Theodore
8 Kramer, Thomas Scaramellino, David Godkin, James Kruzer, and Stuart Gross, or any other agent or
9 representative of Six4Three, discussed Facebook's anti-SLAPP motion, Six4Three's opposition to
10 Facebook's anti-SLAPP motion, the Godkin Declaration or exhibits thereto, or other Facebook
11 confidential information.

12 **REQUEST FOR PRODUCTION NO. 4:**

13 All emails and attachments exchanged between Mr. Kramer and Damian Collins.

14 **REQUEST FOR PRODUCTION NO. 5:**

15 All logs or other records pertaining to the Six4Three Dropbox account that Mr. Kramer accessed
16 from his laptop, including all available or recoverable information about what documents were uploaded
17 to the account and by whom, what documents were downloaded from the account and by whom, what
18 documents were deleted from the account and by whom, when the account was cached or synched locally
19 and on what devices, and all individuals that had access to the account and when.

20 **REQUEST FOR PRODUCTION NO. 6:**

21 All emails or other communications amongst and between Mr. Gross or anyone at Gross & Klein,
22 Mr. Godkin or anyone at Birnbaum & Godkin, Mr. Kramer, Mr. Scaramellino or any other agent,
23 attorney, or individual associated with Six4Three from May 1, 2018 to the present regarding Facebook's
24 anti-SLAPP motion, Six4Three's opposition to Facebook's anti-SLAPP motion, the Godkin Declaration
25 or exhibits thereto, or other Facebook's confidential or highly confidential information. For avoidance of
26 doubt, this would include without limitation communications relating to contacts with the DCMS
27 Committee, *The Guardian*, *The Observer*, or other third parties.

1 Dated: November 30, 2018

DURIE TANGRI LLP

2
3
4 By: _____



SONAL N. MEHTA
JOSHUA H. LERNER
LAURA E. MILLER
CATHERINE Y. KIM

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7 Attorneys for Defendants
Facebook, Inc., Mark Zuckerberg, Christopher Cox,
8 Javier Olivan, Samuel Lessin, Michael Vernal, and Ilya
Sukhar
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1 **PROOF OF SERVICE**

2 I am a citizen of the United States and resident of the State of California. I am employed in San
3 Francisco County, State of California, in the office of a member of the bar of this Court, at whose
4 direction the service was made. I am over the age of eighteen years, and not a party to the within action.
5 My business address is 217 Leidesdorff Street, San Francisco, CA 94111.

6 On November 30, 2018, I served the following documents in the manner described below:

7 **NOTICE OF DEPOSITION OF DAVID GODKIN AND REQUEST FOR**
8 **PRODUCTION OF DOCUMENTS**

- 9
- 10 ☐ (BY U.S. MAIL) I am personally and readily familiar with the business practice of Durie
11 Tangri LLP for collection and processing of correspondence for mailing with the United
12 States Postal Service, and I caused such envelope(s) with postage thereon fully prepaid to
13 be placed in the United States Postal Service at San Francisco, California.
- 14 ☐ (BY MESSENGER SERVICE) by consigning the document(s) to an authorized courier
15 and/or process server for hand delivery on this date.
- 16 ☐ (BY FACSIMILE) I am personally and readily familiar with the business practice of
17 Durie Tangri LLP for collection and processing of document(s) to be transmitted by
18 facsimile and I caused such document(s) on this date to be transmitted by facsimile to the
19 offices of addressee(s) at the numbers listed below.
- 20 ☒ (BY OVERNIGHT MAIL) I am personally and readily familiar with the business
21 practice of Durie Tangri LLP for collection and processing of correspondence for overnight
22 delivery, and I caused such document(s) described herein to be deposited for delivery to a
23 facility regularly maintained by Federal Express for overnight delivery.
- 24 ☒ BY ELECTRONIC SERVICE: By electronically mailing a true and correct copy through
25 Durie Tangri's electronic mail system from smehta@durietangri.com to the email
26 addresses set forth below.
- 27 ☐ (BY PERSONAL DELIVERY) I caused such envelope to be delivered by hand to the
28 offices of each addressee below.

On the following part(ies) in this action:

Stuart G. Gross
GROSS & KLEIN LLP
The Embarcadero, Pier 9, Suite 100
San Francisco, CA 94111
Telephone: 415-671-4628
sgross@grosskleinlaw.com
iatkinsonyoung@grosskleinlaw.com

David S. Godkin
James Kruzer

1 BIRNBAUM & GODKIN, LLP
2 280 Summer Street
3 Boston, MA 02210
4 Telephone: 617-307-6100
5 godkin@birnbaumgodkin.com
6 kruzer@birnbaumgodkin.com

7 *Attorneys for Plaintiff*
8 *Six4Three, LLC*

9 I declare under penalty of perjury under the laws of the United States of America that the
10 foregoing is true and correct. Executed on November 30, 2018, at Redwood City, California.
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EXHIBIT 36

DURIE TANGRI LLP
SONAL N. MEHTA (SBN 222086)
smehta@durietangri.com
JOSHUA H. LERNER (SBN 220755)
jlerner@durietangri.com
LAURA E. MILLER (SBN 271713)
lmiller@durietangri.com
CATHERINE Y. KIM (SBN 308442)
ckim@durietangri.com
217 Leidesdorff Street
San Francisco, CA 94111
Telephone: 415-362-6666
Facsimile: 415-236-6300

Attorneys for Defendants
Facebook, Inc., Mark Zuckerberg, Christopher Cox, Javier
Olivan, Samuel Lessin, Michael Vernal, and Ilya Sukhar

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO

SIX4THREE, LLC, a Delaware limited liability
company,

Plaintiff,

v.

FACEBOOK, INC., a Delaware corporation;
MARK ZUCKERBERG, an individual;
CHRISTOPHER COX, an individual;
JAVIER OLIVAN, an individual;
SAMUEL LESSIN, an individual;
MICHAEL VERNAL, an individual;
ILYA SUKHAR, an individual; and
DOES 1-50, inclusive,

Defendants.

Case No. CIV 533328

**Assigned for all purposes to Hon. V. Raymond
Swope, Dept. 23**

**NOTICE OF DEPOSITION OF STUART
GROSS AND REQUEST FOR PRODUCTION
OF DOCUMENTS**

Dept: 23 (Complex Civil Litigation)
Judge: Honorable V. Raymond Swope

FILING DATE: April 10, 2015
TRIAL DATE: April 25, 2019

1 **ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that, pursuant to Section 2025.010 of the California Code of Civil
3 Procedure, Defendant Facebook, Inc. (“Facebook”) by and through its attorneys, will take the deposition
4 of Stuart Gross on December 6, 2018, at the offices of Durie Tangri LLP located at 217 Leidesdorff
5 Street, San Francisco, California 94111, beginning at 9:00 a.m. PST, or on such other date, time or place
6 as the parties mutually agree.

7 **PLEASE TAKE FURTHER NOTICE** that said deposition will be taken upon oral examination
8 before a Notary Public for the State of California, or such other person authorized to administer oaths,
9 and shall continue from day to day until completed. It will be recorded by stenographic means and will
10 also be recorded by sound-and-visual means, including videotape. Facebook reserves the right to use this
11 audiotape and videotape deposition at the time of trial.

12 **PLEASE TAKE FURTHER NOTICE** that, pursuant to Section 2025.220(a)(4) of the
13 California Code of Civil Procedure that Mr. Gross shall prior to his deposition, and no later than
14 December 5, 2018, produce the documents described as follows:

15 **REQUESTS FOR PRODUCTION**

16 **REQUEST FOR PRODUCTION NO. 1:**

17 Documents (e.g., phone logs) sufficient to show all telephonic and/or video conference
18 communications between Six4Three, including without limitation Theodore Kramer, Thomas
19 Scaramellino, David Godkin, James Kruzer, Stuart Gross, and any other agent or representative of
20 Six4Three, and any individual or entity regarding Facebook’s anti-SLAPP motion, Six4Three’s
21 opposition to Facebook’s anti-SLAPP motion, the Godkin Declaration in support of Six4Three’s
22 opposition to Facebook’s anti-SLAPP motion (“Godkin Declaration”) or exhibits thereto, or other
23 Facebook confidential information. For the avoidance of doubt, this includes but is not limited to media
24 organizations and governmental entities, including the Digital, Culture, Media and Sport Committee of
25 the House of Commons (“DCMS Committee”).

26 **REQUEST FOR PRODUCTION NO. 2:**

27 All communications between Six4Three, including without limitation Theodore Kramer, Thomas
28 Scaramellino, David Godkin, James Kruzer, Stuart Gross, and any other agent or representative of

1 Six4Three, and any third party individual or entity regarding Facebook's anti-SLAPP motion,
2 Six4Three's opposition to Facebook's anti-SLAPP motion, the Godkin Declaration or exhibits thereto, or
3 other Facebook confidential information. For the avoidance of doubt, this includes but is not limited to
4 media organizations and governmental entities, including the Digital, Culture, Media and Sport
5 Committee of the House of Commons ("DCMS Committee").

6 **REQUEST FOR PRODUCTION NO. 3:**

7 Documents sufficient to show the identity of all individuals or entities with whom Theodore
8 Kramer, Thomas Scaramellino, David Godkin, James Kruzer, and Stuart Gross, or any other agent or
9 representative of Six4Three, discussed Facebook's anti-SLAPP motion, Six4Three's opposition to
10 Facebook's anti-SLAPP motion, the Godkin Declaration or exhibits thereto, or other Facebook
11 confidential information.

12 **REQUEST FOR PRODUCTION NO. 4:**

13 All emails and attachments exchanged between Mr. Kramer and Damian Collins.

14 **REQUEST FOR PRODUCTION NO. 5:**

15 All logs or other records pertaining to the Six4Three Dropbox account that Mr. Kramer accessed
16 from his laptop, including all available or recoverable information about what documents were uploaded
17 to the account and by whom, what documents were downloaded from the account and by whom, what
18 documents were deleted from the account and by whom, when the account was cached or synched locally
19 and on what devices, and all individuals that had access to the account and when.

20 **REQUEST FOR PRODUCTION NO. 6:**

21 All emails or other communications amongst and between Mr. Gross or anyone at Gross & Klein,
22 Mr. Godkin or anyone at Birnbaum & Godkin, Mr. Kramer, Mr. Scaramellino or any other agent,
23 attorney, or individual associated with Six4Three from May 1, 2018 to the present regarding Facebook's
24 anti-SLAPP motion, Six4Three's opposition to Facebook's anti-SLAPP motion, the Godkin Declaration
25 or exhibits thereto, or other Facebook's confidential or highly confidential information. For avoidance of
26 doubt, this would include without limitation communications relating to contacts with the DCMS
27 Committee, *The Guardian*, *The Observer*, or other third parties.

1 Dated: November 30, 2018

DURIE TANGRI LLP

2
3
4 By: _____



SONAL N. MEHTA
JOSHUA H. LERNER
LAURA E. MILLER
CATHERINE Y. KIM

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7 Attorneys for Defendants
Facebook, Inc., Mark Zuckerberg, Christopher Cox,
8 Javier Olivan, Samuel Lessin, Michael Vernal, and Ilya
Sukhar
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1 **PROOF OF SERVICE**

2 I am a citizen of the United States and resident of the State of California. I am employed in San
3 Francisco County, State of California, in the office of a member of the bar of this Court, at whose
4 direction the service was made. I am over the age of eighteen years, and not a party to the within action.
5 My business address is 217 Leidesdorff Street, San Francisco, CA 94111.

6 On November 30, 2018, I served the following documents in the manner described below:

7 **NOTICE OF DEPOSITION OF STUART GROSS AND REQUEST FOR**
8 **PRODUCTION OF DOCUMENTS**

- 9
- 10 ☐ (BY U.S. MAIL) I am personally and readily familiar with the business practice of Durie
11 Tangri LLP for collection and processing of correspondence for mailing with the United
12 States Postal Service, and I caused such envelope(s) with postage thereon fully prepaid to
13 be placed in the United States Postal Service at San Francisco, California.
- 14 ☐ (BY MESSENGER SERVICE) by consigning the document(s) to an authorized courier
15 and/or process server for hand delivery on this date.
- 16 ☐ (BY FACSIMILE) I am personally and readily familiar with the business practice of
17 Durie Tangri LLP for collection and processing of document(s) to be transmitted by
18 facsimile and I caused such document(s) on this date to be transmitted by facsimile to the
19 offices of addressee(s) at the numbers listed below.
- 20 ☒ (BY OVERNIGHT MAIL) I am personally and readily familiar with the business
21 practice of Durie Tangri LLP for collection and processing of correspondence for overnight
22 delivery, and I caused such document(s) described herein to be deposited for delivery to a
23 facility regularly maintained by Federal Express for overnight delivery.
- 24 ☒ BY ELECTRONIC SERVICE: By electronically mailing a true and correct copy through
25 Durie Tangri's electronic mail system from smehta@durietangri.com to the email
26 addresses set forth below.
- 27 ☐ (BY PERSONAL DELIVERY) I caused such envelope to be delivered by hand to the
28 offices of each addressee below.

On the following part(ies) in this action:

Stuart G. Gross
GROSS & KLEIN LLP
The Embarcadero, Pier 9, Suite 100
San Francisco, CA 94111
Telephone: 415-671-4628
sgross@grosskleinlaw.com
iatkinsonyoung@grosskleinlaw.com

David S. Godkin
James Kruzer

1 BIRNBAUM & GODKIN, LLP
2 280 Summer Street
3 Boston, MA 02210
4 Telephone: 617-307-6100
5 godkin@birnbaumgodkin.com
6 kruzer@birnbaumgodkin.com

7 *Attorneys for Plaintiff*
8 *Six4Three, LLC*

9 I declare under penalty of perjury under the laws of the United States of America that the
10 foregoing is true and correct. Executed on November 30, 2018, at Redwood City, California.
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EXHIBIT 37

From: James Kruzer
Sent time: 06/06/2018 12:43:01 PM
To: [REDACTED]@cutterlaw.com
Subject: 643 v. Facebook
Attachments: Application for Leave to File Amicus Brief [template].docx

Hello [REDACTED]

Thanks for the call. I've attached a template outlining some case law that you may find helpful. Please feel free to reach out if I can be of any further assistance.

Best,
Jim

BG006440

[Attorney name (Bar No.)
Address Line 1
Address Line 2
Tel:
Fax:]

Attorney for Amicus Curiae [Name of Organization]

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN MATEO

SIX4THREE, LLC, a Delaware limited
Liability company,
Plaintiff,

v.

FACEBOOK, INC., a Delaware corporation;
MARK ZUCKERBERG, an individual;
CHRISTOPHER COX, an individual;
JAVIER OLIVAN, an individual;
SAMUEL LESSIN, an individual;
MICHAEL VERNAL, an individual;
ILYA SUKHAR, an individual; and
DOES 1 through 50, inclusive,
Defendants.

Case No. CIV533328

Assigned For All Purposes to
Hon. V. Raymond Swope, Dept. 23

**APPLICATION FOR LEAVE TO
FILE AMICUS CURIAE BRIEF IN
OPPOSITION TO DEFENDANTS'
MOTION TO SEAL PLAINTIFF'S
ANTI-SLAPP OPPOSITION**

HEARING DATE: July 2, 2018
HEARING TIME: 9:00 a.m.
DEPARTMENT 23
JUDGE: Hon. V. Raymond Swope
FILING DATE: April 10, 2015
TRIAL DATE: April 25, 2019

1 [Name of Organization] respectfully requests leave of this Court to file an amicus curiae
2 brief in support of Plaintiff's Opposition to Defendants' Motion to Seal Plaintiff's Anti-SLAPP
3 Opposition. [Name of Organization] has a strong interest in promoting an informed public debate
4 regarding Defendants' management of the Facebook Platform. [Name of Organization] has
5 reported extensively on these issues, which have long been in the public domain. As such, [Name
6 of Organization's] experience with these issues may aid this Court in its consideration of the
7 factual and legal issues raised in this matter. Accordingly, [Name of Organization] requests leave
8 to file the amicus curiae brief attached as Exhibit A hereto. *See Jersey Maid Milk Products Co. v.*
9 *Brock* (1939) 13 Cal.2d 661, 665 [91 P.2d 599]; *In re Veterans' Industries, Inc.* (1970) 8
10 Cal.App.3d 902, 924-925 [88 Cal.Rptr. 303]; *People ex rel. State Lands Com. v. Long Beach*
11 (1960) 183 Cal.App.2d 271, 276; *see also* Cal. Rules of Court, Rule 8.200; 4 Witkin Cal. Proc.,
12 Pleading § 215 (4th ed. 1997) at 278-280; CEB, *California Civil Appellate Practice*, § 14.66-
13 14.67.

14 1. [Name of Organization] is familiar with the history of Facebook and Facebook
15 Platform, the issues involved in the case, and the pleadings and papers filed therein to date.

16 2. [Name of Organization] is [description of organization and its purpose].

17 3. Over 2 billion people have relied upon or continue to rely upon Defendants to
18 manage Facebook Platform in a manner that respects the privacy of their digital information and
19 ensures their ownership and control over data they upload to the Platform. [Name of
20 Organization], as a media company, has a responsibility to promote an informed public debate
21 regarding Defendants' management of the sensitive information and digital identities of almost
22 one-third of the world's population.

23 4. Tens of millions of businesses rely upon Facebook Platform, which is one of the
24 largest economies globally with an economic impact dwarfing the GDP of most sovereign
25 nations, according to Facebook's own estimates.¹ [Name of Organization], as a media company,
26

27 ¹ *See, e.g.,* [https://newsroom.fb.com/news/2015/01/new-deloitte-report-looks-at-facebooks-](https://newsroom.fb.com/news/2015/01/new-deloitte-report-looks-at-facebooks-impact-on-global-economy-jobs/)
28 [impact-on-global-economy-jobs/](https://newsroom.fb.com/news/2015/01/new-deloitte-report-looks-at-facebooks-impact-on-global-economy-jobs/).

1 has a responsibility to promote an informed public debate regarding the impact of Facebook
2 Platform on the economy, including any impacts on competition and consumer choice.

3 5. [Name of Organization] has [hundreds of thousands or millions] readers or
4 subscribers, many of whom are personally affected by the issues raised in this matter. All of these
5 readers or subscribers have a strong interest in full disclosure regarding Defendants' management
6 of their data, including their management of third party access to such data.

7 6. As a result of media organizations like [Name of Organization] reporting on
8 Facebook Platform in 2018, a number of governments have opened investigations into
9 Facebook's management of its Platform, including its management of user data and third party
10 data access. According to public announcements, government entities currently investigating
11 Facebook's management of Platform and third party data access include the Attorneys General of
12 California, Massachusetts, Mississippi, Missouri, New Jersey, New York, Oregon, and
13 Washington; the United States Federal Trade Commission; and various European governments
14 and regulatory authorities.² If true, Plaintiff's allegations would directly refute a wide range of
15 statements Defendants have made in 2018 in response to inquiries by government authorities and
16 media organizations. As a respected national media organization, [Name of Organization] has a
17 strong interest and responsibility in reporting on these matters fully and truthfully to increase the
18 likelihood that the ongoing investigations proceed with the benefit of accurate and complete
19 information.

20 7. These strong interests of [Name of Organization] and its readership are threatened
21 by Defendants' Motion to Seal and their ongoing attempts to shield their internal

22 ² See [https://ago.mo.gov/home/breaking-news/ag-hawley-issues-investigative-demands-to-](https://ago.mo.gov/home/breaking-news/ag-hawley-issues-investigative-demands-to-facebook)
23 [facebook](https://ago.mo.gov/home/breaking-news/ag-hawley-issues-investigative-demands-to-facebook); [https://ag.ny.gov/press-release/statement-ag-schneiderman-facebookcambridge-](https://ag.ny.gov/press-release/statement-ag-schneiderman-facebookcambridge-analytica)
24 [analytica](https://ag.ny.gov/press-release/statement-ag-schneiderman-facebookcambridge-analytica); [http://www.ago.state.ms.us/releases/ag-hood-investigating-facebooks-user-privacy-](http://www.ago.state.ms.us/releases/ag-hood-investigating-facebooks-user-privacy-practices/)
25 [practices/](http://www.ago.state.ms.us/releases/ag-hood-investigating-facebooks-user-privacy-practices/); <http://nj.gov/oag/newsreleases18/pr20180507b.html>; [https://oag.ca.gov/news/press-](https://oag.ca.gov/news/press-releases/attorney-general-becerra-calls-facebook-protect-users-data)
26 [releases/attorney-general-becerra-calls-facebook-protect-users-data](https://oag.ca.gov/news/press-releases/attorney-general-becerra-calls-facebook-protect-users-data); [https://www.doj.state.or.us/](https://www.doj.state.or.us/media-home/news-media-releases/ag-rosenblum-joins-coalition-demanding-answers-from-facebook/)
27 [media-home/news-media-releases/ag-rosenblum-joins-coalition-demanding-answers-from-](https://www.doj.state.or.us/media-home/news-media-releases/ag-rosenblum-joins-coalition-demanding-answers-from-facebook/)
28 [facebook/](https://www.doj.state.or.us/media-home/news-media-releases/ag-rosenblum-joins-coalition-demanding-answers-from-facebook/); [http://nwnewsnetwork.org/post/washington-oregon-attorneys-general-demand-](http://nwnewsnetwork.org/post/washington-oregon-attorneys-general-demand-answers-facebook)
[answers-facebook](http://nwnewsnetwork.org/post/washington-oregon-attorneys-general-demand-answers-facebook); [https://www.ftc.gov/news-events/press-releases/2018/03/statement-acting-](https://www.ftc.gov/news-events/press-releases/2018/03/statement-acting-director-ftcs-bureau-consumer-protection)
[director-ftcs-bureau-consumer-protection](https://www.ftc.gov/news-events/press-releases/2018/03/statement-acting-director-ftcs-bureau-consumer-protection); [https://ico.org.uk/about-the-ico/news-and-events/news-](https://ico.org.uk/about-the-ico/news-and-events/news-and-blogs/2018/05/ico-statement-investigation-into-data-analytics-for-political-purposes/)
[and-blogs/2018/05/ico-statement-investigation-into-data-analytics-for-political-purposes/](https://ico.org.uk/about-the-ico/news-and-events/news-and-blogs/2018/05/ico-statement-investigation-into-data-analytics-for-political-purposes/).

1 communications, decisions and processes from public view. These strong interests outweigh any
2 legitimate interest Defendants may have in sealing Plaintiff's Anti-SLAPP Opposition and the
3 supporting declaration and exhibits.

4 8. [Name of Organization's] purpose in filing an amicus brief is to alert this Court to
5 a significant public interest in understanding how Defendants have managed their data in light of
6 the ongoing public debate regarding Facebook Platform, the significant power Defendants wield
7 over individuals and businesses, and whether Defendants have lived up to the responsibility that
8 comes with that power. As such, [Name of Organization] does not seek to introduce new legal
9 theories or evidence. Further, while [Name of Organization] supports Plaintiff's Opposition to
10 Defendants' Motion to Seal, [Name of Organization] takes no position on any claims or defenses
11 asserted by either Party in this matter. Rather, [Name of Organization] submits this brief in order
12 to elaborate on some key issues raised by the parties regarding the importance of the public
13 interest in accessing true and accurate information regarding Defendants' management of
14 Facebook Platform.

15 9. To this end, [Name of Organization's] brief focuses on two key legal issues: (1)
16 whether the evidence sought to be unsealed is relevant to the public interest; and (2) whether
17 Defendants' Motion to Seal meets the stringent requirements of Rule 2.550(d).

18 WHEREFORE, [Name of Organization] respectfully requests that this Court grant leave
19 to file the amicus curiae brief attached as Exhibit A hereto.

20
21 DATED:

[ATTORNEY FIRM OR ORGANIZATION
NAME]

22
23 By:

24 [Attorney Name]
25 Attorney for Amicus Curiae
26 [Organization Name]
27
28

EXHIBIT A

[Attorney name (Bar No.)
Address Line 1
Address Line 2
Tel:
Fax:]

Attorney for Amicus Curiae [Name of Organization]

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN MATEO

SIX4THREE, LLC, a Delaware limited
Liability company,
Plaintiff,

v.

FACEBOOK, INC., a Delaware corporation;
MARK ZUCKERBERG, an individual;
CHRISTOPHER COX, an individual;
JAVIER OLIVAN, an individual;
SAMUEL LESSIN, an individual;
MICHAEL VERNAL, an individual;
ILYA SUKHAR, an individual; and
DOES 1 through 50, inclusive,
Defendants.

Case No. CIV533328

Assigned For All Purposes to
Hon. V. Raymond Swope, Dept. 23

**BRIEF OF AMICUS CURIAE IN
OPPOSITION TO DEFENDANTS'
MOTION TO SEAL PLAINTIFF'S
OPPOSITION TO DEFENDANTS'
ANTI-SLAPP MOTIONS**

HEARING DATE: July 2, 2018
HEARING TIME: 9:00 a.m.
DEPARTMENT 23
JUDGE: Hon. V. Raymond Swope
FILING DATE: April 10, 2015
TRIAL DATE: April 25, 2019

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TABLE OF CONTENTS

INTRODUCTION

STATEMENT OF FACTS

ARGUMENT.....

 I. Legal Standard.....

 II. Defendants’ Motion to Seal Should Be Denied As the Public Has a
 Strong Interest In Determining the Veracity of Plaintiff’s Allegations.....

 III. Defendants Cannot Meet the Stringest Requirements of Rule 2.550(d).....

CONCLUSION.....

1 **TABLE OF AUTHORITIES**

2 **Page**

3 **CASES**

4 *H.B. Fuller Co. v. Doe*,
5 (2007) 151 Cal.App.4th 879 [60 Cal.Rptr.3d 501].....

6 *Huffy Corp. v. Superior Court*,
7 (2003) 112 Cal.App.4th 97 [4 Cal.Rptr.3d 823].....

8 *McNair v. National Collegiate Athletic Assn.*,
9 (2015) 234 Cal.App.4th 25 [183 Cal.Rptr.3d 490].....

10 *NBC Subsidiary (KNBC-TV), Inc. v. Superior Court*,
(1999) 20 Cal.4th 1178 [86 Cal.Rptr.2d 778, 980 P.2d 337].....

11 *Overstock.com, Inc. v. Goldman Sachs Group, Inc.*,
12 (2014) 231 Cal.App.4th 471 [180 Cal.Rptr.3d 234]..... *passim*

13 *Williams v. U.S. Bank N.A.*,
14 (E.D.Cal. 2013) 290 F.R.D. 600.....

15 **STATUTES AND OTHER AUTHORITIES**

16 C.R.C. 2.550 *et seq.*..... *passim*

INTRODUCTION

[Name of Organization] (“Amicus”) respectfully submits this Brief in Opposition to Defendants’ Motion to Seal Plaintiff’s Opposition to Defendants’ Anti-SLAPP Motions and the Declaration of David S. Godkin In Opposition to Defendants’ Anti-SLAPP Motions, including all exhibits filed therewith. As detailed herein and in the papers filed by Plaintiff and the Defendants, there is no dispute that this matter “greatly implicates the public interest.” *See, e.g.*, Facebook’s Special Motion to Strike (Anti-SLAPP), filed on November 21, 2017, at 2; Plaintiff’s Fifth Amended Complaint (“5AC”), ¶ 6. Over 2 billion people have relied upon or continue to rely upon Defendants to manage Facebook Platform in a manner that respects the privacy of their digital information and ensures their ownership and control over data they upload to the Platform. Further, tens of millions of businesses rely upon Facebook Platform, which is one of the largest economies globally with an economic impact dwarfing the GDP of most sovereign nations, according to Facebook’s own estimates.¹ Amicus has [hundreds of thousands or millions] readers or subscribers, many of whom are personally affected by the issues raised in this matter. All of these readers or subscribers have a strong interest in full disclosure regarding Defendants’ management of data, particularly third party access to data.

As a result of media organizations reporting on Facebook Platform in 2018, a number of governments have opened investigations into Facebook’s management of its Platform with a particular focus on its management of user data and third party data access in the 2011 to 2015 timeframe. According to public announcements, government entities currently investigating Facebook’s management of Platform and third party data access include the Attorneys General of California, Massachusetts, Mississippi, Missouri, New Jersey, New York, Oregon, and

¹ *See, e.g.*, <https://newsroom.fb.com/news/2015/01/new-deloitte-report-looks-at-facebooks-impact-on-global-economy-jobs/>.

1 Washington; the United States Federal Trade Commission; and various European governments
2 and regulatory authorities.² If true, Plaintiff’s allegations would directly refute a wide range of
3 statements Defendants have made in 2018 in response to inquiries by government authorities and
4 media organizations regarding its management of Platform from 2011 to 2015. As a respected
5 national media organization, Amicus has a strong interest and obligation to the public to report on
6 these matters fully and truthfully. Therefore, Amicus respectfully requests the Court deny
7 Facebook’s Motion to Seal as to all evidence submitted by Plaintiff in Opposition to Defendants’
8 Anti-SLAPP Motions that is more than three years old and contains no bank statements or
9 account information, source code, non-public financial information, trade secrets, national
10 security matters or sensitive personal information, such as credit card or social security data.
11

12 STATEMENT OF FACTS

13 Amicus adopts and incorporates by this reference the statement of facts set forth in
14 Plaintiff’s Memorandum of Points and Authorities in Opposition to Defendants’ Motion to Seal.
15 Further, Amicus adopts and incorporates by this reference the following exhibits to Plaintiff’s
16 Request for Judicial Notice (“RJN”) filed on May 17, 2018:
17

- 18 1. RJN Exhibits 1-27 – These exhibits consist of official statements, publications and
19 records by Facebook regarding Facebook Platform from 2007 through 2018.
20
21

22 ² See [https://ago.mo.gov/home/breaking-news/ag-hawley-issues-investigative-demands-to-](https://ago.mo.gov/home/breaking-news/ag-hawley-issues-investigative-demands-to-facebook)
23 [facebook](https://ago.mo.gov/home/breaking-news/ag-hawley-issues-investigative-demands-to-facebook); [https://ag.ny.gov/press-release/statement-ag-schneiderman-facebookcambridge-](https://ag.ny.gov/press-release/statement-ag-schneiderman-facebookcambridge-analytica)
24 [analytica](https://ag.ny.gov/press-release/statement-ag-schneiderman-facebookcambridge-analytica); [http://www.ago.state.ms.us/releases/ag-hood-investigating-facebooks-user-privacy-](http://www.ago.state.ms.us/releases/ag-hood-investigating-facebooks-user-privacy-practices/)
25 [practices/](http://www.ago.state.ms.us/releases/ag-hood-investigating-facebooks-user-privacy-practices/); <http://nj.gov/oag/newsreleases18/pr20180507b.html>; [https://oag.ca.gov/news/press-](https://oag.ca.gov/news/press-releases/attorney-general-becerra-calls-facebook-protect-users-data)
26 [releases/attorney-general-becerra-calls-facebook-protect-users-data](https://oag.ca.gov/news/press-releases/attorney-general-becerra-calls-facebook-protect-users-data); [https://www.doj.state.or.us/](https://www.doj.state.or.us/media-home/news-media-releases/ag-rosenblum-joins-coalition-demanding-answers-from-facebook/)
27 [media-home/news-media-releases/ag-rosenblum-joins-coalition-demanding-answers-from-](https://www.doj.state.or.us/media-home/news-media-releases/ag-rosenblum-joins-coalition-demanding-answers-from-facebook/)
28 [facebook/](https://www.doj.state.or.us/media-home/news-media-releases/ag-rosenblum-joins-coalition-demanding-answers-from-facebook/); [http://nwnewsnetwork.org/post/washington-oregon-attorneys-general-demand-](http://nwnewsnetwork.org/post/washington-oregon-attorneys-general-demand-answers-facebook)
[answers-facebook](http://nwnewsnetwork.org/post/washington-oregon-attorneys-general-demand-answers-facebook); [https://www.ftc.gov/news-events/press-releases/2018/03/statement-acting-](https://www.ftc.gov/news-events/press-releases/2018/03/statement-acting-director-ftcs-bureau-consumer-protection)
[director-ftcs-bureau-consumer-protection](https://www.ftc.gov/news-events/press-releases/2018/03/statement-acting-director-ftcs-bureau-consumer-protection); [https://ico.org.uk/about-the-ico/news-and-events/news-](https://ico.org.uk/about-the-ico/news-and-events/news-and-blogs/2018/05/ico-statement-investigation-into-data-analytics-for-political-purposes/)
[and-blogs/2018/05/ico-statement-investigation-into-data-analytics-for-political-purposes/](https://ico.org.uk/about-the-ico/news-and-events/news-and-blogs/2018/05/ico-statement-investigation-into-data-analytics-for-political-purposes/).

2. RJN Exhibits 28-35 – These exhibits consist of official records and communications between the United States Federal Trade Commission and Facebook regarding Facebook Platform and management of user data, including third party access to data, from 2011 to 2012.
3. RJN Exhibits 52-67 – These exhibits consist of public statements and representations by Facebook’s senior executives to various media organizations primarily in the 2010 to 2014 timeframe.
4. RJN Exhibits 72-200 – These exhibits consist of articles published by nationally recognized media organizations regarding Facebook Platform and management of user data, reporting on many of the issues raised in the instant matter, from 2007 to 2018.

As Plaintiff’s RJN demonstrates, the issues at the heart of this case have been widely reported on in the media. Further, Defendants have voluntarily made statements and representations to the media since 2007 regarding these issues and have therefore brought these issues into the public sphere of their own accord. Amicus incorporates into the record the fact of Defendants’ publications and statements, and the associated media coverage, from 2007 to 2018, while taking no position on the truth or falsity of Defendants’ representations. Additional facts and citations to the record will be provided in the body of the argument as necessary.

ARGUMENT

I. Legal Standard

California recognizes a First Amendment right of access to civil litigation documents filed in court as a basis for adjudication of a non-discovery motion, such as this Anti-SLAPP Motion. *See* C.R.C. 2.550 and 2.551; *Overstock.com, Inc. v. Goldman Sachs Group, Inc.* (2014) 231 Cal.App.4th 471, 485 [180 Cal.Rptr.3d 234]. Any sealing issues raised by the parties are to be

1 resolved contemporaneous with the substantive underlying motion and shall not be delayed. *Id.*,
2 at 473 (“Cal. Rules of Court, rule 2.550(a)(3), cannot be read in a way that necessarily delays the
3 resolution of sealing issues until after a trial court rules on the merits. Indeed, the courts have
4 expressed concern about delayed rulings on sealing issues”); 495-496 (“access should be
5 immediate and contemporaneous”) (quotations omitted). Prior sealing orders are subject to
6 “continuing review and modification by the trial judge” to ensure an “evolving view of the
7 propriety of sealing.” *Id.*, at 482-483. The constitutional right of access to materials submitted as
8 a basis for adjudication applies to all submitted materials regardless of whether the trial court
9 relies upon them when ruling so long as they are not “irrelevant” to the matter being adjudicated
10 (e.g., the *Overstock* court held that the bank balance of a party was irrelevant to the plaintiff’s
11 arguments in support of its case). *Id.*, at 473, 492, 508. An order denying a motion to seal or an
12 order granting a motion to unseal does not require express factual findings, but an order granting
13 a motion to seal does. *Id.*, at 488. A party, the Court, or ***any member of the public*** may seek to
14 unseal materials submitted in support of or in opposition to any substantive, non-discovery
15 motion. *See* C.R.C. 2.551(h)(2) (emphasis added).

18 Once the sealed record rules are triggered, as they are here, “court records are presumed to
19 be open” and the Court “may order a record sealed only upon making express findings that (1)
20 there exists an overriding interest that overcomes the right of public access to the record; (2) the
21 overriding interest supports sealing the record; (3) a substantial probability exists that the
22 overriding interest will be prejudiced if the record is not sealed; (4) the proposed sealing is
23 narrowly tailored; and (5) no less restrictive means exist to achieve the overriding interest.” *See*
24 *Overstock* (2014) 231 Cal.App.4th at 487; Rule 2.550(c)-(d). The Court must make express factual
25 findings supporting the sealing order and failure to do so makes the “order deficient”. *See*
26 *Overstock* (2014) 231 Cal.App.4th at 487; Rule 2.550(e)(1)(A).

1 **II. Defendants’ Motion to Seal Should Be Denied As the Public Has a Strong Interest In**
2 **Determining the Veracity of Plaintiff’s Allegations**

3 The 5AC includes a wide range of allegations regarding issues that have been widely
4 reported on in the media, and the public has a strong interest in getting to the bottom of these
5 issues. This interest is heightened by the fact that three of the Defendants (Zuckerberg, Cox and
6 Olivan) to this day maintain control over Facebook’s products and services. In fact, two of the
7 Defendants (Cox and Oliván) were promoted in May 2018 to expand their control over virtually
8 all of Facebook’s products and services; at the same time, Facebook announced plans to build
9 new platforms.³ In light of Defendants ongoing control over the data of more than 2 billion
10 people, the public has a strong interest in evidence pertaining to the following allegations:

- 11
- 12 1. The 5AC alleges that in 2011 and 2012 Zuckerberg held discussions with a select group
13 of executives in which they agreed upon a scheme to weaponize user data and violate
14 user privacy in order to transition Facebook’s collapsing desktop advertising business to
15 mobile advertising using a vague policy called “reciprocity”. 5AC ¶¶ 85, 209. These
16 issues have been reported in the media. *See, e.g.*, Plaintiff’s RJN, Exs. 72, 76, 81. Further,
17 any evidence submitted in support of these allegations is now more than five years old
18 and should be released to the public.
- 19
- 20 2. The 5AC alleges that in late 2012 and early 2013, Zuckerberg instructed senior
21 executives to continue to induce third parties to rely on data Zuckerberg had already
22 decided to privatize while approaching a select group of companies to shut down under
- 23

24 ³ Facebook announced in May 2018 an executive management reshuffle that consolidates the
25 power of Cox and Oliván in the company and creates an entire division at the company devoted to
26 building new “platforms.” *See, e.g.*, [https://www.vanityfair.com/news/2018/05/facebook-](https://www.vanityfair.com/news/2018/05/facebook-executive-reorganization)
27 [executive-reorganization](https://www.vanityfair.com/news/2018/05/facebook-executive-reorganization) (Facebook announces executive reshuffle on May 8, 2018 in which Cox
28 now oversees Facebook, Instagram, WhatsApp and Facebook Messenger, and Oliván oversees all
 other central product services including growth, advertising, security, integrity, privacy and other
 critical functions).

1 the guise of the reciprocity policy in order to force them to buy unrelated mobile ads.
2 5AC ¶¶ 85, 211-213, 238, 295. These issues have been reported in the media. *See, e.g.*
3 Plaintiff's RJN, Exs. 72, 152. Further, any evidence submitted in support of these
4 allegations is now more than five years old and should be released to the public.

5
6 3. The 5AC alleges that in 2013 Facebook expanded its scheme to weaponize user data by
7 blacklisting and whitelisting companies based on their willingness to purchase mobile ads
8 and their degree of competitiveness with Facebook's own future products in order to
9 determine the winners and losers in a wide range of consumer software markets,
10 including messaging, professional services, contact management, gifting, payment,
11 sharing economy, utility, file sharing, birthday reminder, photo and video, calendar,
12 lifestyle and health and fitness apps. 5AC ¶¶ 16-18, 88-90, 212. These issues regarding
13 anti-competitive conduct have been reported in the media. *See, e.g.*, Plaintiff's RJN, Exs.
14 72, 152. Further, any evidence submitted in support of these allegations is now more than
15 four years old and should be released to the public.

16
17 4. The 5AC alleges that in the second half of 2013 and first half of 2014 Defendants created
18 and disseminated a fraudulent narrative that falsely portrayed major Platform changes
19 announced on April 30, 2014 as being justified by user privacy concerns in order to wipe
20 out 40,000 consumer software applications to make way for Facebook's new products
21 and services. 5AC ¶¶ 23-27, 85, 223-226. These issues regarding anti-competitive
22 conduct have been reported in the media. *See, e.g.*, Plaintiff's RJN, Exs. 72, 152, 165.
23 Further, any evidence submitted in support of these allegations is now more than four
24 years old and should be released to the public.

25
26 5. The 5AC alleges that from 2012 to 2015, Defendants used Facebook's willful failure to
27 implement proper privacy controls to violate the privacy of hundreds of millions of
28

1 consumers in a wide range of projects, including projects widely reported in the media
2 like tracking competitors using improperly obtained Onavo data, tracking the text and call
3 logs of Android users without consent, developing shadow profiles of non-Facebook
4 users by tracking their text and call logs without consent, turning the Bluetooth setting on
5 the phone on without user permission, causing privacy settings to lapse after a period of
6 time, and willfully ignoring privacy settings for certain popular Facebook features. 5AC
7 ¶¶ 226-233. *See, e.g.*, Plaintiff's RJN, Exs. 99, 138, 141, 172, 176, 181, 183.

9 The public has a fundamental interest in determining the veracity of these allegations, which
10 cannot be overridden by any legitimate interest Defendants may have to keep the records sealed.
11 In fact, if Defendants' representations are true, then unsealing the evidence will vindicate
12 Defendants, which the public also has a strong interest in knowing given the immense trust the
13 public places in Defendants to safeguard their digital identities and personal information.
14

15 **III. Defendants Cannot Meet the Stringest Requirements of Rule 2.550(d)**

16 Defendants contend that their overriding interest in sealing Plaintiff's Opposition to
17 Defendants' Anti-SLAPP Motion and Plaintiff's supporting declaration and exhibits arises out of
18 the fact that they contain Facebook's internal strategic analyses and business discussions, the
19 release of which could damage Facebook's business and business relationships and its
20 relationships with third parties. Defendants provide no additional information regarding how and
21 why any specific document will damage any current business relationship. Defendants further
22 provide no nexus between information that is now more than three years and up to ten years old
23 and any current legitimate interest Facebook may have today. Defendants do not identify any
24 specific information as being subject to any ongoing confidentiality obligation under a currently
25 enforceable contract with a third party.
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1 Rather, Defendants have asserted generically that they have an overriding interest in
2 avoiding embarrassment to their business reputation and in preventing the release of information
3 that may or may not implicate them in unlawful conduct. *See, Huffly Corp. v. Superior Court*
4 (2003) 112 Cal.App.4th 97, 108 [4 Cal.Rptr.3d 823] (“Defendant has failed to demonstrate an
5 overriding interest to permit sealing this type of admission.... [N]o overriding public interest
6 warrants secreting from the public documents filed in its courts that there may have been
7 violations of...laws.”); *McNair v. National Collegiate Athletic Assn.* (2015) 234 Cal.App.4th 25,
8 35-36 [183 Cal.Rptr.3d 490] (“There must be a specific showing of serious injury. [S]pecificity is
9 essential. Broad allegations of harm, bereft of specific examples or articulated reasoning, are
10 insufficient.”) (quotations and citations omitted). No court has found an overriding interest under
11 Rule 2.550(d) in discussions, emails and documents that: (1) are more than three years old, and in
12 many cases five or six years old; (2) contain no personally identifiable information, bank
13 statements or accounts, source code, financial information, trade secrets, or material subject to a
14 current confidentiality or contractual obligation; and (3) concern conduct that has been widely
15 and voluntarily disclosed by Defendants in the public sphere and the media.⁴ A much higher

19 ⁴ *See, e.g., Overstock* (2014) 231 Cal.App.4th at 482 (“The court next concluded, as to a
20 significant number of the materials, defendants' declarations were conclusory and
21 unpersuasive, and lacked the specific facts necessary to support sealing. The court additionally
22 concluded plaintiffs had persuasively show[n] many of the documents no longer had sufficient
23 indicia of confidentiality to warrant sealing. In sum, [g]iven (1) that this case was filed in
24 February 2007, more than five years ago, (2) that most, if not all, of the transactions reflected
25 in the documents are at least four years old, (3) that many of the allegedly confidential
26 business practices and trading strategies are outdated due to changes in federal law, and (4)
27 that much of the material at issue was publicly disclosed at the January 5, 2012 hearing on the
28 motions for summary judgment, the trial court observed, defendants' failure to present specific
facts to justify sealing the documents at issue is understandable.”) (quotations and citations
omitted); *H.B. Fuller Co. v. Doe* (2007) 151 Cal.App.4th 879, 894-898 [60 Cal.Rptr.3d 501]
(party seeking to seal records “never identified any specific facts disclosure of which would
harm any identified interest” but instead simply stated that the material included its “business
strategy and forecasts, competitive outlook, [and] product development” without identifying
anything “that discloses information in any of these categories”).

1 burden is required by California courts for a party to establish an overriding interest under Rule
2 2.550(d)(1), particularly when that interest seeks to prevent public access to materials submitted
3 in opposition to a motion seeking final judgment. *See NBC Subsidiary (KNBC-TV), Inc. v.*
4 *Superior Court* (1999) 20 Cal.4th 1178, 1222, fn. 46 [86 Cal.Rptr.2d 778, 980 P.2d 337] (citing
5 cases in which an overriding interest has been found that entail interests much more extreme and
6 protected than that which Defendants assert here, such as the protection of minors from trauma or
7 the safeguarding of trade secrets or national security matters).

9 Further, Defendants cannot meet their burden under Rule 2.550(d)(2) because, even if
10 Defendants had identified an overriding interest, such an interest would necessitate ***unsealing*** the
11 record based on Defendants' own arguments in their Anti-SLAPP Motion that the conduct at
12 issue greatly implicates the public interest and was undertaken in furtherance of Defendants' First
13 Amendment rights to free speech. Finally, Defendants' argument that their proposal is narrowly
14 tailored is specious, and there are less restrictive means to achieve any legitimate overriding
15 interest if Defendants are able to identify one. Defendants' Motion to Seal sweeps up whole cloth
16 the content of every document, email and deposition testimony produced by Defendants or their
17 employees cited in opposition to the Anti-SLAPP Motion. Defendants' proposal could not
18 possibly be less narrow and further makes no attempt to identify specific information that would
19 cause direct and identifiable harm to Defendants if released. Further, there are clearly less
20 restrictive means to achieve any legitimate overriding interest Defendants may have in preserving
21 their relationships with third parties.

24 If Defendants had articulated clearly how any specific piece of information jeopardizes a
25 specific, ongoing contractual commitment, then this would have guided the Court to parse the
26 evidence to satisfy any legitimate concerns Defendants may have. However, Defendants opted
27

1 not to identify materials with specificity and therefore cannot meet their burden under Rule
2 2.550(d)(4)-(5). *Overstock* (2014) 231 Cal.App.4th at 500 (“Finally, on the other side of the
3 equation the trial courts can, and should, view overly inclusive sealing efforts with a jaundiced
4 eye, and impose sanctions as appropriate.”); *Williams v. U.S. Bank N.A.* (E.D.Cal. 2013) 290
5 F.R.D. 600, 606, fn. 9, italics omitted (threatening sanctions when “defendant made no effort at
6 all to seal only those portions of the substantive exhibits that it actually wanted to protect as
7 confidential”). Defendants are required to satisfy all five prongs of Rule 2.550(d) and yet their
8 Motion to Seal cannot satisfy any of these prongs.
9

10 CONCLUSION

11 For the foregoing reasons, Defendants’ Motion to Seal should be denied.
12
13

14 DATED:

[ATTORNEY FIRM OR ORGANIZATION
NAME]

16 By: _____

[Attorney Name]

Attorney for Amicus Curiae

[Organization Name]
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EXHIBIT 38

From: Thomas Scaramellino <thomas.scaramellino@gmail.com>
Sent time: 05/29/2018 02:27:57 PM
To: [REDACTED]@openmarketsinstitute.org>; David Godkin; James Kruzer
Subject: Amicus Brief
Attachments: Application for Leave to File Amicus Brief v3.docx

Thanks for the call just now. Please pass this along to your team.

Please find attached a template brief. You could simply fill in the yellow highlights here, tweak the language around media to describe NGOs, and note that while you take no position on Plaintiff's claims, Plaintiff provided legal research to expedite the drafting of the brief (see rule below). You could then file as is. Shouldn't take more than a couple hours all in. The template makes clear that you take no position on any claims or defenses and do not support either party.

In case you have questions on whether amicus is appropriate procedure, see below the relevant section of the main case on the issue of intervening versus amicus when media seek to unseal records in CA state court. The case is [Overstock.com, Inc. v. Goldman Sachs Group, Inc. \(2014\) 231 Cal.App.4th 471, 488-490 \[180 Cal.Rptr.3d 234\]](#).

Also, below *Overstock*, you will find the only relevant rule regarding amicus filings. This is an appellate court rule and so does not apply to the Superior Court. I just wanted to make you aware of it nonetheless; we recommend complying in an abundance of caution. To comply, you would simply state that Plaintiff provided legal research to expedite drafting of the brief.

A few additional items to note:

- The brief must be filed with the clerk no later than June 6 to be heard on July 2. Many clerks in California trial courts are not familiar with amicus/intervenor filing procedures, though filing an amicus brief is clearly permitted at the Court's discretion.
- We recommend filing with the clerk well in advance of the June 6 deadline in case the clerk needs to be educated on this procedure. We are happy to assist in this.
- We also recommend filing a courtesy copy directly with the Judge to ensure he is aware of your intent to file the brief prior to the deadline.
- The hearing is on July 2 at 9:00 am in Department 23 of the San Mateo Superior Court at 400 County Center, Redwood City, CA. We recommend having reporters at the hearing as the substantive motions will be argued at that time.

Please let us know if you have any other questions. We'll pass along Facebook's motion end of day.

Our interactions with FTC staff have included [REDACTED] in the bureau of consumer protection and [REDACTED] chief for criminal liaison unit. I would love to pick your brain on the FTC in the near future.

Regards,

Tom

[\(Overstock.com, Inc. v. Goldman Sachs Group, Inc. \(2014\) 231 Cal.App.4th 471, 488-490 \[180 Cal.Rptr.3d 234\].\)](#)

The sealed records rules expressly permit the public, which includes members of the press, to seek the unsealing of court records. (Rule 2.551(h)(2).) Rule 2.551 "provides procedural flexibility to third parties seeking to unseal court records, including"—in addition to noticed proceedings in the trial court—"the vehicle of initiating an original proceeding in the reviewing court by way of a petition for writ of mandate to compel the lower court to unseal records that were improperly sealed." (*Savaglio, supra*, 149 Cal.App.4th at pp. 601–603.) Rule 2.551(h)(2), thus, reflects the Judicial Council's implementation of *NBC Subsidiary's* admonition that "representatives of the press and general public "must be given an opportunity to be heard on the question [***23] of their exclusion."" (*NBC Subsidiary, supra*, 20 Cal.4th at p. 1217, fn. 36.)

CA(9) (9) Here the media asserts, as it has in other cases, that it also has a right to participate in proceedings to seal court records and further contends it is entitled to do so as an intervener. And HN11 some cases have noted in passing the media was allowed to intervene to oppose a motion to seal. (E.g., *In re [**489] Marriage of Burkle* (2006) 135 Cal.App.4th 1045, 1050 [37 Cal. Rptr. 3d 805] (*Burkle*); *Fagan v. Superior [**250] Court* (2003) 111 Cal.App.4th 607, 611 [4 Cal. Rptr. 3d 239].)

However, after examining the nature and parameters of intervention, *Savaglio* concluded it was not the proper procedure for media participation, even in connection with the unsealing of court records. (*Savaglio, supra*, 149 Cal.App.4th at p. 602.) The newspaper seeking leave to intervene in that case "mistakenly equate[d] intervention with pursuing a motion to seal. They are not the same. The right to intervene, whether conditional or unconditional, is the right to become a party to pending litigation. As applied to matters of law, 'to intervene' means "[t]o interpose in a lawsuit so as to become a party to it." (*Estate of Ghio* (1910) 157 Cal. 552, 559–560 [108 P. 516].) In civil law intervention is "[t]he act by which a third party becomes a party in a suit pending between other persons." (*Id.* at p. 560.) By allowing a member of the public to file a motion to unseal records, rule 2.551(h) provides a mechanism for third parties to correct overbroad or unsubstantiated sealing orders, but [***24] it does not transform that member of the public into a party to the lawsuit." (*Savaglio*, at pp. 602–603.)

We agree with *Savaglio* that intervention pursuant to Code of Civil Procedure section 387 is not a means by which nonparties can participate in proceedings to seal or unseal court records. This does not mean, however, media participation in proceedings to seal court records is improper, even though the sealing rules provide for participation only in proceedings to unseal court records. The courts have ample authority to allow media participation as amici curiae. (See, e.g., *In re Marriage Cases* (2008) 43 Cal.4th 757, 791–792, fn. 10 [76 Cal. Rptr. 3d 683, 183 P.3d 384] [superior courts retain "broad discretion over the conduct of pending litigation" and have "the authority to determine the manner and extent of ... entities' participation as amici curiae that would be of most assistance to the court"]; *Cromer v. Superior Court* (1980) 109 Cal.App.3d 728, 731 [167 Cal. Rptr. 671] [court "aided by briefs of amici curiae representing interests of the news media and the public generally"]; *Apple Inc. v. Samsung Electronics Co., Ltd.* (Fed. Cir. 2013) 727 F.3d 1214, 1220 (*Apple*) [trial court denied motion to intervene on sealing issues, but both it and appellate court granted media leave to appear as amici curiae].)

Here, the trial court rejected the media's attempt to intervene in connection with the sealing motions pertaining to plaintiffs' effort to file a fifth amended complaint [***25] on the ground the media had not properly applied to intervene, but granted applications to intervene in connection with the sealing motions pertaining to defendants' summary judgment motions. Allowing the media to intervene in connection with the second round of sealing motions was, for the [**490] reasons we have explained, improper. For the same reason, there is no merit to the media's claim the court erred in not allowing them to intervene in connection with the first round of sealing motions filed in connection with the proposed fifth amended complaint. As to the initial motions, however, the media were essentially allowed to participate as amici curiae, and they were not entitled to any other status.

Rule 8.200. Briefs by parties and amici curiae

(a) Parties' briefs

- (1) Each appellant must serve and file an appellant's opening brief.
- (2) Each respondent must serve and file a respondent's brief.
- (3) Each appellant may serve and file a reply brief.
- (4) No other brief may be filed except with the permission of the presiding justice, unless it qualifies under (b) or (c)(7).
- (5) Instead of filing a brief, or as part of its brief, a party may join in or adopt by reference all or part of a brief in the same or a related appeal.

(b) Supplemental briefs after remand or transfer from Supreme Court

- (1) Within 15 days after finality of a Supreme Court decision remanding or order transferring a cause to a Court of Appeal for further

proceedings, any party may serve and file a supplemental opening brief in the Court of Appeal. Within 15 days after such a brief is filed, any opposing party may serve and file a supplemental responding brief.

(2) Supplemental briefs must be limited to matters arising after the previous Court of Appeal decision in the cause, unless the presiding justice permits briefing on other matters.

(3) Supplemental briefs may not be filed if the previous decision of the Court of Appeal was a denial of a petition for a writ within its original jurisdiction without issuance of an alternative writ or order to show cause.

(Subd (b) adopted effective January 1, 2003.)

(c) Amicus curiae briefs

(1) Within 14 days after the last appellant's reply brief is filed or could have been filed under rule 8.212, whichever is earlier, any person or entity may serve and file an application for permission of the presiding justice to file an amicus curiae brief. For good cause, the presiding justice may allow later filing.

(2) The application must state the applicant's interest and explain how the proposed amicus curiae brief will assist the court in deciding the matter.

(3) The application must also identify:

(A) Any party or any counsel for a party in the pending appeal who:

(i) Authored the proposed amicus brief in whole or in part; or

(ii) Made a monetary contribution intended to fund the preparation or submission of the brief; and

(B) Every person or entity who made a monetary contribution intended to fund the preparation or submission of the brief, other than the amicus curiae, its members, or its counsel in the pending appeal.

(4) The proposed brief must be served and must accompany the application, and may be combined with it.

(5) The covers of the application and proposed brief must identify the party the applicant supports, if any.

(6) If the court grants the application, any party may file an answer within the time the court specifies. The answer must be served on all parties and the amicus curiae.

(7) The Attorney General may file an amicus curiae brief without the presiding justice's permission, unless the brief is submitted on behalf of another state officer or agency. The Attorney General must serve and file the brief within 14 days after the last appellant's reply brief is filed or could have been filed under rule 8.212, whichever is earlier, and must provide the information required by (2) and comply with (5). Any party may serve and file an answer within 14 days after the brief is filed.

(Subd (c) amended effective January 1, 2009; adopted as subd (b) effective January 1, 2002; previously relettered effective January 1, 2003; previously amended effective January 1, 2007, and January 1, 2008.)

[Attorney name (Bar No.)
Address Line 1
Address Line 2
Tel:
Fax:]

Attorney for Amicus Curiae [Name of Organization]

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN MATEO

SIX4THREE, LLC, a Delaware limited
Liability company,
Plaintiff,

v.

FACEBOOK, INC., a Delaware corporation;
MARK ZUCKERBERG, an individual;
CHRISTOPHER COX, an individual;
JAVIER OLIVAN, an individual;
SAMUEL LESSIN, an individual;
MICHAEL VERNAL, an individual;
ILYA SUKHAR, an individual; and
DOES 1 through 50, inclusive,
Defendants.

Case No. CIV533328

Assigned For All Purposes to
Hon. V. Raymond Swope, Dept. 23

**APPLICATION FOR LEAVE TO
FILE AMICUS CURIAE BRIEF IN
OPPOSITION TO DEFENDANTS'
MOTION TO SEAL PLAINTIFF'S
ANTI-SLAPP OPPOSITION**

HEARING DATE: July 2, 2018
HEARING TIME: 9:00 a.m.
DEPARTMENT 23
JUDGE: Hon. V. Raymond Swope
FILING DATE: April 10, 2015
TRIAL DATE: April 25, 2019

1 [Name of Organization] respectfully requests leave of this Court to file an amicus curiae
2 brief in support of Plaintiff's Opposition to Defendants' Motion to Seal Plaintiff's Anti-SLAPP
3 Opposition. [Name of Organization] has a strong interest in promoting an informed public debate
4 regarding Defendants' management of the Facebook Platform. [Name of Organization] has
5 reported extensively on these issues, which have long been in the public domain. As such, [Name
6 of Organization's] experience with these issues may aid this Court in its consideration of the
7 factual and legal issues raised in this matter. Accordingly, [Name of Organization] requests leave
8 to file the amicus curiae brief attached as Exhibit A hereto. *See Jersey Maid Milk Products Co. v.*
9 *Brock* (1939) 13 Cal.2d 661, 665 [91 P.2d 599]; *In re Veterans' Industries, Inc.* (1970) 8
10 Cal.App.3d 902, 924-925 [88 Cal.Rptr. 303]; *People ex rel. State Lands Com. v. Long Beach*
11 (1960) 183 Cal.App.2d 271, 276; *see also* Cal. Rules of Court, Rule 8.200; 4 Witkin Cal. Proc.,
12 Pleading § 215 (4th ed. 1997) at 278-280; CEB, *California Civil Appellate Practice*, § 14.66-
13 14.67.

14 1. [Name of Organization] is familiar with the history of Facebook and Facebook
15 Platform, the issues involved in the case, and the pleadings and papers filed therein to date.

16 2. [Name of Organization] is [description of organization and its purpose].

17 3. Over 2 billion people have relied upon or continue to rely upon Defendants to
18 manage Facebook Platform in a manner that respects the privacy of their digital information and
19 ensures their ownership and control over data they upload to the Platform. [Name of
20 Organization], as a media company, has a responsibility to promote an informed public debate
21 regarding Defendants' management of the sensitive information and digital identities of almost
22 one-third of the world's population.

23 4. Tens of millions of businesses rely upon Facebook Platform, which is one of the
24 largest economies globally with an economic impact dwarfing the GDP of most sovereign
25 nations, according to Facebook's own estimates.¹ [Name of Organization], as a media company,
26

27 ¹ *See, e.g.,* [https://newsroom.fb.com/news/2015/01/new-deloitte-report-looks-at-facebooks-
28 impact-on-global-economy-jobs/](https://newsroom.fb.com/news/2015/01/new-deloitte-report-looks-at-facebooks-impact-on-global-economy-jobs/).

1 has a responsibility to promote an informed public debate regarding the impact of Facebook
2 Platform on the economy, including any impacts on competition and consumer choice.

3 5. [Name of Organization] has [hundreds of thousands or millions] readers or
4 subscribers, many of whom are personally affected by the issues raised in this matter. All of these
5 readers or subscribers have a strong interest in full disclosure regarding Defendants' management
6 of their data, including their management of third party access to such data.

7 6. As a result of media organizations like [Name of Organization] reporting on
8 Facebook Platform in 2018, a number of governments have opened investigations into
9 Facebook's management of its Platform, including its management of user data and third party
10 data access. According to public announcements, government entities currently investigating
11 Facebook's management of Platform and third party data access include the Attorneys General of
12 California, Massachusetts, Mississippi, Missouri, New Jersey, New York, Oregon, and
13 Washington; the United States Federal Trade Commission; and various European governments
14 and regulatory authorities.² If true, Plaintiff's allegations would directly refute a wide range of
15 statements Defendants have made in 2018 in response to inquiries by government authorities and
16 media organizations. As a respected national media organization, [Name of Organization] has a
17 strong interest and responsibility in reporting on these matters fully and truthfully to increase the
18 likelihood that the ongoing investigations proceed with the benefit of accurate and complete
19 information.

20 7. These strong interests of [Name of Organization] and its readership are threatened
21 by Defendants' Motion to Seal and their ongoing attempts to shield their internal

22 ² See [https://ago.mo.gov/home/breaking-news/ag-hawley-issues-investigative-demands-to-](https://ago.mo.gov/home/breaking-news/ag-hawley-issues-investigative-demands-to-facebook)
23 [facebook](https://ago.mo.gov/home/breaking-news/ag-hawley-issues-investigative-demands-to-facebook); [https://ag.ny.gov/press-release/statement-ag-schneiderman-facebookcambridge-](https://ag.ny.gov/press-release/statement-ag-schneiderman-facebookcambridge-analytica)
24 [analytica](https://ag.ny.gov/press-release/statement-ag-schneiderman-facebookcambridge-analytica); [http://www.ago.state.ms.us/releases/ag-hood-investigating-facebooks-user-privacy-](http://www.ago.state.ms.us/releases/ag-hood-investigating-facebooks-user-privacy-practices/)
25 [practices/](http://www.ago.state.ms.us/releases/ag-hood-investigating-facebooks-user-privacy-practices/); <http://nj.gov/oag/newsreleases18/pr20180507b.html>; [https://oag.ca.gov/news/press-](https://oag.ca.gov/news/press-releases/attorney-general-becerra-calls-facebook-protect-users-data)
26 [releases/attorney-general-becerra-calls-facebook-protect-users-data](https://oag.ca.gov/news/press-releases/attorney-general-becerra-calls-facebook-protect-users-data); [https://www.doj.state.or.us/](https://www.doj.state.or.us/media-home/news-media-releases/ag-rosenblum-joins-coalition-demanding-answers-from-facebook/)
27 [media-home/news-media-releases/ag-rosenblum-joins-coalition-demanding-answers-from-](https://www.doj.state.or.us/media-home/news-media-releases/ag-rosenblum-joins-coalition-demanding-answers-from-facebook/)
28 [facebook/](https://www.doj.state.or.us/media-home/news-media-releases/ag-rosenblum-joins-coalition-demanding-answers-from-facebook/); [http://nwnewsnetwork.org/post/washington-oregon-attorneys-general-demand-](http://nwnewsnetwork.org/post/washington-oregon-attorneys-general-demand-answers-facebook)
[answers-facebook](http://nwnewsnetwork.org/post/washington-oregon-attorneys-general-demand-answers-facebook); [https://www.ftc.gov/news-events/press-releases/2018/03/statement-acting-](https://www.ftc.gov/news-events/press-releases/2018/03/statement-acting-director-ftcs-bureau-consumer-protection)
[director-ftcs-bureau-consumer-protection](https://www.ftc.gov/news-events/press-releases/2018/03/statement-acting-director-ftcs-bureau-consumer-protection); [https://ico.org.uk/about-the-ico/news-and-events/news-](https://ico.org.uk/about-the-ico/news-and-events/news-and-blogs/2018/05/ico-statement-investigation-into-data-analytics-for-political-purposes/)
[and-blogs/2018/05/ico-statement-investigation-into-data-analytics-for-political-purposes/](https://ico.org.uk/about-the-ico/news-and-events/news-and-blogs/2018/05/ico-statement-investigation-into-data-analytics-for-political-purposes/).

1 communications, decisions and processes from public view. These strong interests outweigh any
2 legitimate interest Defendants may have in sealing Plaintiff's Anti-SLAPP Opposition and the
3 supporting declaration and exhibits.

4 8. [Name of Organization's] purpose in filing an amicus brief is to alert this Court to
5 a significant public interest in understanding how Defendants have managed their data in light of
6 the ongoing public debate regarding Facebook Platform, the significant power Defendants wield
7 over individuals and businesses, and whether Defendants have lived up to the responsibility that
8 comes with that power. As such, [Name of Organization] does not seek to introduce new legal
9 theories or evidence. Further, while [Name of Organization] supports Plaintiff's Opposition to
10 Defendants' Motion to Seal, [Name of Organization] takes no position on any claims or defenses
11 asserted by either Party in this matter. Rather, [Name of Organization] submits this brief in order
12 to elaborate on some key issues raised by the parties regarding the importance of the public
13 interest in accessing true and accurate information regarding Defendants' management of
14 Facebook Platform.

15 9. To this end, [Name of Organization's] brief focuses on two key legal issues: (1)
16 whether the evidence sought to be unsealed is relevant to the public interest; and (2) whether
17 Defendants' Motion to Seal meets the stringent requirements of Rule 2.550(d).

18 WHEREFORE, [Name of Organization] respectfully requests that this Court grant leave
19 to file the amicus curiae brief attached as Exhibit A hereto.

20
21 DATED:

[ATTORNEY FIRM OR ORGANIZATION
NAME]

22
23 By:

24 [Attorney Name]
25 Attorney for Amicus Curiae
26 [Organization Name]
27
28

EXHIBIT A

[Attorney name (Bar No.)
Address Line 1
Address Line 2
Tel:
Fax:]

Attorney for Amicus Curiae [Name of Organization]

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN MATEO

SIX4THREE, LLC, a Delaware limited
Liability company,
Plaintiff,

v.

FACEBOOK, INC., a Delaware corporation;
MARK ZUCKERBERG, an individual;
CHRISTOPHER COX, an individual;
JAVIER OLIVAN, an individual;
SAMUEL LESSIN, an individual;
MICHAEL VERNAL, an individual;
ILYA SUKHAR, an individual; and
DOES 1 through 50, inclusive,
Defendants.

Case No. CIV533328

Assigned For All Purposes to
Hon. V. Raymond Swope, Dept. 23

**BRIEF OF AMICUS CURIAE IN
OPPOSITION TO DEFENDANTS'
MOTION TO SEAL PLAINTIFF'S
OPPOSITION TO DEFENDANTS'
ANTI-SLAPP MOTIONS**

HEARING DATE: July 2, 2018
HEARING TIME: 9:00 a.m.
DEPARTMENT 23
JUDGE: Hon. V. Raymond Swope
FILING DATE: April 10, 2015
TRIAL DATE: April 25, 2019

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TABLE OF CONTENTS

INTRODUCTION

STATEMENT OF FACTS

ARGUMENT.....

 I. Legal Standard.....

 II. Defendants’ Motion to Seal Should Be Denied As the Public Has a
 Strong Interest In Determining the Veracity of Plaintiff’s Allegations.....

 III. Defendants Cannot Meet the Stringest Requirements of Rule 2.550(d).....

CONCLUSION.....

1 **TABLE OF AUTHORITIES**

2 **Page**

3 **CASES**

4 *H.B. Fuller Co. v. Doe*,
5 (2007) 151 Cal.App.4th 879 [60 Cal.Rptr.3d 501].....

6 *Huffy Corp. v. Superior Court*,
7 (2003) 112 Cal.App.4th 97 [4 Cal.Rptr.3d 823].....

8 *McNair v. National Collegiate Athletic Assn.*,
9 (2015) 234 Cal.App.4th 25 [183 Cal.Rptr.3d 490].....

10 *NBC Subsidiary (KNBC-TV), Inc. v. Superior Court*,
(1999) 20 Cal.4th 1178 [86 Cal.Rptr.2d 778, 980 P.2d 337].....

11 *Overstock.com, Inc. v. Goldman Sachs Group, Inc.*,
12 (2014) 231 Cal.App.4th 471 [180 Cal.Rptr.3d 234]..... *passim*

13 *Williams v. U.S. Bank N.A.*,
14 (E.D.Cal. 2013) 290 F.R.D. 600.....

15 **STATUTES AND OTHER AUTHORITIES**

16 C.R.C. 2.550 *et seq.*..... *passim*

INTRODUCTION

[Name of Organization] (“Amicus”) respectfully submits this Brief in Opposition to Defendants’ Motion to Seal Plaintiff’s Opposition to Defendants’ Anti-SLAPP Motions and the Declaration of David S. Godkin In Opposition to Defendants’ Anti-SLAPP Motions, including all exhibits filed therewith. As detailed herein and in the papers filed by Plaintiff and the Defendants, there is no dispute that this matter “greatly implicates the public interest.” *See, e.g.*, Facebook’s Special Motion to Strike (Anti-SLAPP), filed on November 21, 2017, at 2; Plaintiff’s Fifth Amended Complaint (“5AC”), ¶ 6. Over 2 billion people have relied upon or continue to rely upon Defendants to manage Facebook Platform in a manner that respects the privacy of their digital information and ensures their ownership and control over data they upload to the Platform. Further, tens of millions of businesses rely upon Facebook Platform, which is one of the largest economies globally with an economic impact dwarfing the GDP of most sovereign nations, according to Facebook’s own estimates.¹ Amicus has [hundreds of thousands or millions] readers or subscribers, many of whom are personally affected by the issues raised in this matter. All of these readers or subscribers have a strong interest in full disclosure regarding Defendants’ management of data, particularly third party access to data.

As a result of media organizations reporting on Facebook Platform in 2018, a number of governments have opened investigations into Facebook’s management of its Platform with a particular focus on its management of user data and third party data access in the 2011 to 2015 timeframe. According to public announcements, government entities currently investigating Facebook’s management of Platform and third party data access include the Attorneys General of California, Massachusetts, Mississippi, Missouri, New Jersey, New York, Oregon, and

¹ *See, e.g.*, <https://newsroom.fb.com/news/2015/01/new-deloitte-report-looks-at-facebooks-impact-on-global-economy-jobs/>.

1 Washington; the United States Federal Trade Commission; and various European governments
2 and regulatory authorities.² If true, Plaintiff’s allegations would directly refute a wide range of
3 statements Defendants have made in 2018 in response to inquiries by government authorities and
4 media organizations regarding its management of Platform from 2011 to 2015. As a respected
5 national media organization, Amicus has a strong interest and obligation to the public to report on
6 these matters fully and truthfully. Therefore, Amicus respectfully requests the Court deny
7 Facebook’s Motion to Seal as to all evidence submitted by Plaintiff in Opposition to Defendants’
8 Anti-SLAPP Motions that is more than three years old and contains no bank statements or
9 account information, source code, non-public financial information, trade secrets, national
10 security matters or sensitive personal information, such as credit card or social security data.
11

12 STATEMENT OF FACTS

13 Amicus adopts and incorporates by this reference the statement of facts set forth in
14 Plaintiff’s Memorandum of Points and Authorities in Opposition to Defendants’ Motion to Seal.
15 Further, Amicus adopts and incorporates by this reference the following exhibits to Plaintiff’s
16 Request for Judicial Notice (“RJN”) filed on May 17, 2018:
17

- 18 1. RJN Exhibits 1-27 – These exhibits consist of official statements, publications and
19 records by Facebook regarding Facebook Platform from 2007 through 2018.
20
21

22 ² See [https://ago.mo.gov/home/breaking-news/ag-hawley-issues-investigative-demands-to-](https://ago.mo.gov/home/breaking-news/ag-hawley-issues-investigative-demands-to-facebook)
23 [facebook](https://ago.mo.gov/home/breaking-news/ag-hawley-issues-investigative-demands-to-facebook); [https://ag.ny.gov/press-release/statement-ag-schneiderman-facebookcambridge-](https://ag.ny.gov/press-release/statement-ag-schneiderman-facebookcambridge-analytica)
24 [analytica](https://ag.ny.gov/press-release/statement-ag-schneiderman-facebookcambridge-analytica); [http://www.ago.state.ms.us/releases/ag-hood-investigating-facebooks-user-privacy-](http://www.ago.state.ms.us/releases/ag-hood-investigating-facebooks-user-privacy-practices/)
25 [practices/](http://www.ago.state.ms.us/releases/ag-hood-investigating-facebooks-user-privacy-practices/); <http://nj.gov/oag/newsreleases18/pr20180507b.html>; [https://oag.ca.gov/news/press-](https://oag.ca.gov/news/press-releases/attorney-general-becerra-calls-facebook-protect-users-data)
26 [releases/attorney-general-becerra-calls-facebook-protect-users-data](https://oag.ca.gov/news/press-releases/attorney-general-becerra-calls-facebook-protect-users-data); [https://www.doj.state.or.us/](https://www.doj.state.or.us/media-home/news-media-releases/ag-rosenblum-joins-coalition-demanding-answers-from-facebook/)
27 [media-home/news-media-releases/ag-rosenblum-joins-coalition-demanding-answers-from-](https://www.doj.state.or.us/media-home/news-media-releases/ag-rosenblum-joins-coalition-demanding-answers-from-facebook/)
28 [facebook/](https://www.doj.state.or.us/media-home/news-media-releases/ag-rosenblum-joins-coalition-demanding-answers-from-facebook/); [http://nwnewsnetwork.org/post/washington-oregon-attorneys-general-demand-](http://nwnewsnetwork.org/post/washington-oregon-attorneys-general-demand-answers-facebook)
[answers-facebook](http://nwnewsnetwork.org/post/washington-oregon-attorneys-general-demand-answers-facebook); [https://www.ftc.gov/news-events/press-releases/2018/03/statement-acting-](https://www.ftc.gov/news-events/press-releases/2018/03/statement-acting-director-ftcs-bureau-consumer-protection)
[director-ftcs-bureau-consumer-protection](https://www.ftc.gov/news-events/press-releases/2018/03/statement-acting-director-ftcs-bureau-consumer-protection); [https://ico.org.uk/about-the-ico/news-and-events/news-](https://ico.org.uk/about-the-ico/news-and-events/news-and-blogs/2018/05/ico-statement-investigation-into-data-analytics-for-political-purposes/)
[and-blogs/2018/05/ico-statement-investigation-into-data-analytics-for-political-purposes/](https://ico.org.uk/about-the-ico/news-and-events/news-and-blogs/2018/05/ico-statement-investigation-into-data-analytics-for-political-purposes/).

2. RJN Exhibits 28-35 – These exhibits consist of official records and communications between the United States Federal Trade Commission and Facebook regarding Facebook Platform and management of user data, including third party access to data, from 2011 to 2012.
3. RJN Exhibits 52-67 – These exhibits consist of public statements and representations by Facebook’s senior executives to various media organizations primarily in the 2010 to 2014 timeframe.
4. RJN Exhibits 72-200 – These exhibits consist of articles published by nationally recognized media organizations regarding Facebook Platform and management of user data, reporting on many of the issues raised in the instant matter, from 2007 to 2018.

As Plaintiff’s RJN demonstrates, the issues at the heart of this case have been widely reported on in the media. Further, Defendants have voluntarily made statements and representations to the media since 2007 regarding these issues and have therefore brought these issues into the public sphere of their own accord. Amicus incorporates into the record the fact of Defendants’ publications and statements, and the associated media coverage, from 2007 to 2018, while taking no position on the truth or falsity of Defendants’ representations. Additional facts and citations to the record will be provided in the body of the argument as necessary.

ARGUMENT

I. Legal Standard

California recognizes a First Amendment right of access to civil litigation documents filed in court as a basis for adjudication of a non-discovery motion, such as this Anti-SLAPP Motion. *See* C.R.C. 2.550 and 2.551; *Overstock.com, Inc. v. Goldman Sachs Group, Inc.* (2014) 231 Cal.App.4th 471, 485 [180 Cal.Rptr.3d 234]. Any sealing issues raised by the parties are to be

1 resolved contemporaneous with the substantive underlying motion and shall not be delayed. *Id.*,
2 at 473 (“Cal. Rules of Court, rule 2.550(a)(3), cannot be read in a way that necessarily delays the
3 resolution of sealing issues until after a trial court rules on the merits. Indeed, the courts have
4 expressed concern about delayed rulings on sealing issues”); 495-496 (“access should be
5 immediate and contemporaneous”) (quotations omitted). Prior sealing orders are subject to
6 “continuing review and modification by the trial judge” to ensure an “evolving view of the
7 propriety of sealing.” *Id.*, at 482-483. The constitutional right of access to materials submitted as
8 a basis for adjudication applies to all submitted materials regardless of whether the trial court
9 relies upon them when ruling so long as they are not “irrelevant” to the matter being adjudicated
10 (e.g., the *Overstock* court held that the bank balance of a party was irrelevant to the plaintiff’s
11 arguments in support of its case). *Id.*, at 473, 492, 508. An order denying a motion to seal or an
12 order granting a motion to unseal does not require express factual findings, but an order granting
13 a motion to seal does. *Id.*, at 488. A party, the Court, or ***any member of the public*** may seek to
14 unseal materials submitted in support of or in opposition to any substantive, non-discovery
15 motion. *See* C.R.C. 2.551(h)(2) (emphasis added).

18 Once the sealed record rules are triggered, as they are here, “court records are presumed to
19 be open” and the Court “may order a record sealed only upon making express findings that (1)
20 there exists an overriding interest that overcomes the right of public access to the record; (2) the
21 overriding interest supports sealing the record; (3) a substantial probability exists that the
22 overriding interest will be prejudiced if the record is not sealed; (4) the proposed sealing is
23 narrowly tailored; and (5) no less restrictive means exist to achieve the overriding interest.” *See*
24 *Overstock* (2014) 231 Cal.App.4th at 487; Rule 2.550(c)-(d). The Court must make express factual
25 findings supporting the sealing order and failure to do so makes the “order deficient”. *See*
26 *Overstock* (2014) 231 Cal.App.4th at 487; Rule 2.550(e)(1)(A).

1 **II. Defendants’ Motion to Seal Should Be Denied As the Public Has a Strong Interest In**
2 **Determining the Veracity of Plaintiff’s Allegations**

3 The 5AC includes a wide range of allegations regarding issues that have been widely
4 reported on in the media, and the public has a strong interest in getting to the bottom of these
5 issues. This interest is heightened by the fact that three of the Defendants (Zuckerberg, Cox and
6 Olivan) to this day maintain control over Facebook’s products and services. In fact, two of the
7 Defendants (Cox and Oliván) were promoted in May 2018 to expand their control over virtually
8 all of Facebook’s products and services; at the same time, Facebook announced plans to build
9 new platforms.³ In light of Defendants ongoing control over the data of more than 2 billion
10 people, the public has a strong interest in evidence pertaining to the following allegations:

- 11
- 12 1. The 5AC alleges that in 2011 and 2012 Zuckerberg held discussions with a select group
13 of executives in which they agreed upon a scheme to weaponize user data and violate
14 user privacy in order to transition Facebook’s collapsing desktop advertising business to
15 mobile advertising using a vague policy called “reciprocity”. 5AC ¶¶ 85, 209. These
16 issues have been reported in the media. *See, e.g.*, Plaintiff’s RJN, Exs. 72, 76, 81. Further,
17 any evidence submitted in support of these allegations is now more than five years old
18 and should be released to the public.
- 19
- 20 2. The 5AC alleges that in late 2012 and early 2013, Zuckerberg instructed senior
21 executives to continue to induce third parties to rely on data Zuckerberg had already
22 decided to privatize while approaching a select group of companies to shut down under
23

24 ³ Facebook announced in May 2018 an executive management reshuffle that consolidates the
25 power of Cox and Oliván in the company and creates an entire division at the company devoted to
26 building new “platforms.” *See, e.g.*, [https://www.vanityfair.com/news/2018/05/facebook-](https://www.vanityfair.com/news/2018/05/facebook-executive-reorganization)
27 [executive-reorganization](https://www.vanityfair.com/news/2018/05/facebook-executive-reorganization) (Facebook announces executive reshuffle on May 8, 2018 in which Cox
28 now oversees Facebook, Instagram, WhatsApp and Facebook Messenger, and Oliván oversees all
 other central product services including growth, advertising, security, integrity, privacy and other
 critical functions).

1 the guise of the reciprocity policy in order to force them to buy unrelated mobile ads.
2 5AC ¶¶ 85, 211-213, 238, 295. These issues have been reported in the media. *See, e.g.*
3 Plaintiff's RJN, Exs. 72, 152. Further, any evidence submitted in support of these
4 allegations is now more than five years old and should be released to the public.
5

6 3. The 5AC alleges that in 2013 Facebook expanded its scheme to weaponize user data by
7 blacklisting and whitelisting companies based on their willingness to purchase mobile ads
8 and their degree of competitiveness with Facebook's own future products in order to
9 determine the winners and losers in a wide range of consumer software markets,
10 including messaging, professional services, contact management, gifting, payment,
11 sharing economy, utility, file sharing, birthday reminder, photo and video, calendar,
12 lifestyle and health and fitness apps. 5AC ¶¶ 16-18, 88-90, 212. These issues regarding
13 anti-competitive conduct have been reported in the media. *See, e.g.*, Plaintiff's RJN, Exs.
14 72, 152. Further, any evidence submitted in support of these allegations is now more than
15 four years old and should be released to the public.
16

17 4. The 5AC alleges that in the second half of 2013 and first half of 2014 Defendants created
18 and disseminated a fraudulent narrative that falsely portrayed major Platform changes
19 announced on April 30, 2014 as being justified by user privacy concerns in order to wipe
20 out 40,000 consumer software applications to make way for Facebook's new products
21 and services. 5AC ¶¶ 23-27, 85, 223-226. These issues regarding anti-competitive
22 conduct have been reported in the media. *See, e.g.*, Plaintiff's RJN, Exs. 72, 152, 165.
23 Further, any evidence submitted in support of these allegations is now more than four
24 years old and should be released to the public.
25

26 5. The 5AC alleges that from 2012 to 2015, Defendants used Facebook's willful failure to
27 implement proper privacy controls to violate the privacy of hundreds of millions of
28

1 consumers in a wide range of projects, including projects widely reported in the media
2 like tracking competitors using improperly obtained Onavo data, tracking the text and call
3 logs of Android users without consent, developing shadow profiles of non-Facebook
4 users by tracking their text and call logs without consent, turning the Bluetooth setting on
5 the phone on without user permission, causing privacy settings to lapse after a period of
6 time, and willfully ignoring privacy settings for certain popular Facebook features. 5AC
7 ¶¶ 226-233. *See, e.g.*, Plaintiff's RJN, Exs. 99, 138, 141, 172, 176, 181, 183.

9 The public has a fundamental interest in determining the veracity of these allegations, which
10 cannot be overridden by any legitimate interest Defendants may have to keep the records sealed.
11 In fact, if Defendants' representations are true, then unsealing the evidence will vindicate
12 Defendants, which the public also has a strong interest in knowing given the immense trust the
13 public places in Defendants to safeguard their digital identities and personal information.
14

15 **III. Defendants Cannot Meet the Stringest Requirements of Rule 2.550(d)**

16 Defendants contend that their overriding interest in sealing Plaintiff's Opposition to
17 Defendants' Anti-SLAPP Motion and Plaintiff's supporting declaration and exhibits arises out of
18 the fact that they contain Facebook's internal strategic analyses and business discussions, the
19 release of which could damage Facebook's business and business relationships and its
20 relationships with third parties. Defendants provide no additional information regarding how and
21 why any specific document will damage any current business relationship. Defendants further
22 provide no nexus between information that is now more than three years and up to ten years old
23 and any current legitimate interest Facebook may have today. Defendants do not identify any
24 specific information as being subject to any ongoing confidentiality obligation under a currently
25 enforceable contract with a third party.
26
27
28

1 Rather, Defendants have asserted generically that they have an overriding interest in
2 avoiding embarrassment to their business reputation and in preventing the release of information
3 that may or may not implicate them in unlawful conduct. *See, Huffly Corp. v. Superior Court*
4 (2003) 112 Cal.App.4th 97, 108 [4 Cal.Rptr.3d 823] (“Defendant has failed to demonstrate an
5 overriding interest to permit sealing this type of admission.... [N]o overriding public interest
6 warrants secreting from the public documents filed in its courts that there may have been
7 violations of...laws.”); *McNair v. National Collegiate Athletic Assn.* (2015) 234 Cal.App.4th 25,
8 35-36 [183 Cal.Rptr.3d 490] (“There must be a specific showing of serious injury. [S]pecificity is
9 essential. Broad allegations of harm, bereft of specific examples or articulated reasoning, are
10 insufficient.”) (quotations and citations omitted). No court has found an overriding interest under
11 Rule 2.550(d) in discussions, emails and documents that: (1) are more than three years old, and in
12 many cases five or six years old; (2) contain no personally identifiable information, bank
13 statements or accounts, source code, financial information, trade secrets, or material subject to a
14 current confidentiality or contractual obligation; and (3) concern conduct that has been widely
15 and voluntarily disclosed by Defendants in the public sphere and the media.⁴ A much higher

19 ⁴ *See, e.g., Overstock* (2014) 231 Cal.App.4th at 482 (“The court next concluded, as to a
20 significant number of the materials, defendants' declarations were conclusory and
21 unpersuasive, and lacked the specific facts necessary to support sealing. The court additionally
22 concluded plaintiffs had persuasively show[n] many of the documents no longer had sufficient
23 indicia of confidentiality to warrant sealing. In sum, [g]iven (1) that this case was filed in
24 February 2007, more than five years ago, (2) that most, if not all, of the transactions reflected
25 in the documents are at least four years old, (3) that many of the allegedly confidential
26 business practices and trading strategies are outdated due to changes in federal law, and (4)
27 that much of the material at issue was publicly disclosed at the January 5, 2012 hearing on the
28 motions for summary judgment, the trial court observed, defendants' failure to present specific
facts to justify sealing the documents at issue is understandable.”) (quotations and citations
omitted); *H.B. Fuller Co. v. Doe* (2007) 151 Cal.App.4th 879, 894-898 [60 Cal.Rptr.3d 501]
(party seeking to seal records “never identified any specific facts disclosure of which would
harm any identified interest” but instead simply stated that the material included its “business
strategy and forecasts, competitive outlook, [and] product development” without identifying
anything “that discloses information in any of these categories”).

1 burden is required by California courts for a party to establish an overriding interest under Rule
2 2.550(d)(1), particularly when that interest seeks to prevent public access to materials submitted
3 in opposition to a motion seeking final judgment. *See NBC Subsidiary (KNBC-TV), Inc. v.*
4 *Superior Court* (1999) 20 Cal.4th 1178, 1222, fn. 46 [86 Cal.Rptr.2d 778, 980 P.2d 337] (citing
5 cases in which an overriding interest has been found that entail interests much more extreme and
6 protected than that which Defendants assert here, such as the protection of minors from trauma or
7 the safeguarding of trade secrets or national security matters).

9 Further, Defendants cannot meet their burden under Rule 2.550(d)(2) because, even if
10 Defendants had identified an overriding interest, such an interest would necessitate *unsealing* the
11 record based on Defendants' own arguments in their Anti-SLAPP Motion that the conduct at
12 issue greatly implicates the public interest and was undertaken in furtherance of Defendants' First
13 Amendment rights to free speech. Finally, Defendants' argument that their proposal is narrowly
14 tailored is specious, and there are less restrictive means to achieve any legitimate overriding
15 interest if Defendants are able to identify one. Defendants' Motion to Seal sweeps up whole cloth
16 the content of every document, email and deposition testimony produced by Defendants or their
17 employees cited in opposition to the Anti-SLAPP Motion. Defendants' proposal could not
18 possibly be less narrow and further makes no attempt to identify specific information that would
19 cause direct and identifiable harm to Defendants if released. Further, there are clearly less
20 restrictive means to achieve any legitimate overriding interest Defendants may have in preserving
21 their relationships with third parties.

24 If Defendants had articulated clearly how any specific piece of information jeopardizes a
25 specific, ongoing contractual commitment, then this would have guided the Court to parse the
26 evidence to satisfy any legitimate concerns Defendants may have. However, Defendants opted
27

1 not to identify materials with specificity and therefore cannot meet their burden under Rule
2 2.550(d)(4)-(5). *Overstock* (2014) 231 Cal.App.4th at 500 (“Finally, on the other side of the
3 equation the trial courts can, and should, view overly inclusive sealing efforts with a jaundiced
4 eye, and impose sanctions as appropriate.”); *Williams v. U.S. Bank N.A.* (E.D.Cal. 2013) 290
5 F.R.D. 600, 606, fn. 9, italics omitted (threatening sanctions when “defendant made no effort at
6 all to seal only those portions of the substantive exhibits that it actually wanted to protect as
7 confidential”). Defendants are required to satisfy all five prongs of Rule 2.550(d) and yet their
8 Motion to Seal cannot satisfy any of these prongs.

10 CONCLUSION

11 For the foregoing reasons, Defendants’ Motion to Seal should be denied.

14 DATED:

[ATTORNEY FIRM OR ORGANIZATION
NAME]

16 By: _____

[Attorney Name]

Attorney for Amicus Curiae

[Organization Name]

EXHIBIT 39

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SIX4THREE, LLC, a Delaware
limited liability company

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN MATEO

SIX4THREE, LLC, a Delaware limited
liability company,

Plaintiff,

v.

FACEBOOK, INC., et al.,

Defendants.

Case No. CIV 533328

**Assigned for all purposes to Hon. V.
Raymond Swope, Dept. 23**

**OBJECTIONS AND RESPONSES TO
FACEBOOK'S NOTICE OF
DEPOSITION WITH REQUEST FOR
THE PRODUCTION OF DOCUMENTS
TO THEODORE KRAMER**

PROPOUNDING PARTY: FACEBOOK

RESPONDING PARTY:

SIX4THREE, LLC

SET NUMBER: ONE

Responding Party has not fully completed its investigation of the facts relating to this matter. All the answers contained herein are based upon such information and documents which are presently available and specifically known to Responding Party and disclose only those contentions which presently occur to such Responding Party. It is anticipated that further discovery, independent investigation, legal research and analysis will supply additional facts, add meaning to the known facts, as well as establish entirely new factual conclusions and legal contentions, all of which may lead to substantial additions, changes in and variations from the contentions herein set forth. The following responses to the notice of deposition and requests for production of documents are given without prejudice to Responding Party's right to produce evidence of any subsequently discovered fact or facts which Responding Party may later recall. Responding Party accordingly reserves the right to change any and all answers herein as additional facts are ascertained, analyses are made, legal research is completed and contentions are made.

The answers contained herein are made in a good faith effort to supply as much factual information and as much specification of legal contentions as is presently known but should in no way be in prejudice of Responding Party in relation to further discovery, research and analysis.

I. RESPONSES TO NOTICE OF DEPOSITION

Responding Party objects to the notice of deposition of Mr. Kramer on the ground that the date and time noticed for Mr. Kramer's deposition provides for an unreasonably short time for Mr. Kramer to prepare for his deposition. Responding party further objects to the notice of deposition as having been chosen without prior consultation with counsel. Responding Party will cooperate with Facebook's counsel to agree to a date and location for the deposition. Responding Party further objects on the ground that the date noticed for the deposition is two days prior to that allowed under the Court's November 30, 2018 Order.

II. RESPONSES TO REQUESTS FOR PRODUCTION OF DOCUMENTS
REQUEST FOR PRODUCTION OF DOCUMENTS NO. 1

Documents (e.g., phone logs) sufficient to show all telephonic and/or video conference

1 communications between Six4Three, including without limitation Theodore Kramer, Thomas
2 Scaramellino, David Godkin, James Kruzer, Stuart Gross, and any other agent or representative of
3 Six4Three, and any individual or entity regarding Facebook’s anti-SLAPP motion, Six4Three’s
4 opposition to Facebook’s anti-SLAPP motion, the Godkin Declaration in support of Six4Three’s
5 opposition to Facebook’s anti-SLAPP motion (“Godkin Declaration”) or exhibits thereto, or other
6 Facebook confidential information. For avoidance of doubt, this includes but is not limited to
7 media organizations and governmental entities, including the Digital, Culture, Media and Sport
8 Committee of the House of Commons (“DCMS Committee”).

9 **RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS NO. 1**

10 Responding Party objects to the request to the extent it seeks information that is protected
11 from disclosure by the attorney-client privilege, the work product doctrine, and any other
12 applicable privilege or doctrine protecting such information from disclosure.

13 Responding Party objects to the request as unduly burdensome in light of the fact that Mr.
14 Kramer has complied with the Court’s November 30, 2018 Order and has provided the electronic
15 devices on which the information sought may be located to the Forensic Examiner and, as a result,
16 the Responding Party does not have access to such information.

17 Responding Party objects to the request on the ground that it is overbroad in that it includes
18 within its scope documents concerning the drafting and filing of the referenced court filings and
19 which have no relevance to the matters currently at issue, and therefore appear requested with the
20 purpose of harassing Responding Party and Mr. Kramer.

21 Responding Party objects to the request to any other extent that it is vague, overly broad,
22 burdensome, and/or seeks information that is neither material, necessary, or likely to lead to the
23 discovery of admissible evidence.

24 Responding Party objects to the request on the ground and to the extent that it may not be
25 possible to identify responsive documents based on the wording of the request.

26 Responding Party objects to the request to the extent that the time for which production is
27 demanded is unreasonably short, particularly when considered in combination with the
28 aforementioned over-breadth of the request and the inability to access information potentially

1 subject to the request.

2 Responding Party further objects on the ground that the dated noticed for production of
3 documents is two days prior to that allowed under the Court's November 30, 2018 Order.

4 Responding Party objects to the request to the extent it seeks confidential financial,
5 proprietary, business or personal information.

6 Responding Party objects to the request to the extent it impermissibly seeks to compel
7 through its phrasing the admission by Responding Party that any particular event occurred. To the
8 extent that Responding Party provides responses to the request such responses do not constitute
9 any such admission that any such particular event occurred.

10 Responding Party objects to the request to the extent it assumes facts that have not been
11 established, that are not true, or that are inaccurate.

12 Responding Party objects to the request to the extent it requires answers greater than,
13 beyond the requirements of, and/or at variance to applicable California law.

14 Responding Party objects to the request to the extent it does not adequately define the
15 terms used in them.

16 Responding Party objects to the request to the extent it seeks information that is not in
17 Responding Party's possession, custody or control.

18 Responding Party objects to the request to the extent it seeks to impose an obligation on
19 Responding Party to provide information for or on behalf of any person or entity other than
20 Responding Party.

21 Responding Party objects to the request to the extent that the discovery sought is
22 unreasonably cumulative or duplicative, or is obtainable from some other source that is more
23 convenient, less burdensome or less expensive.

24 The objections and responses herein are made without waiver of and with specific
25 preservation of all objections as to competency, relevancy, materiality, privilege, and admissibility
26 of the document or the subject matter thereof as evidence for any purpose and any proceeding in
27 this action (including trial) and in other actions. Subject to and without waiving the preceding
28 objections, or admitting to the validity of the terms of the request, Responding Party responds:

1 Responding Party will make a reasonable and diligent search for responsive documents,
2 and, to the extent any responsive documents are found and they are not covered by the attorney-
3 client, attorney work product, or any other privilege, will produce such documents – though, due
4 to the unreasonably short time for production and the fact that Mr. Kramer does not have current
5 access to his electronic devices on which such documents might be located, responsive
6 documents cannot be produced on the date requested. Responding Party will cooperate with
7 Facebook’s counsel to agree to a schedule for production of documents.

8 **REQUEST FOR PRODUCTION OF DOCUMENTS NO. 2**

9 All communications between Six4Three, including without limitation Theodore Kramer,
10 Thomas Scaramellino, David Godkin, James Kruzer, Stuart Gross, and any other agent or
11 representative of Six4Three, and any third party individual or entity regarding Facebook’s anti-
12 SLAPP motion, Six4Three’s opposition to Facebook’s anti-SLAPP motion, the Godkin
13 Declaration or exhibits thereto, or other Facebook confidential information. For the avoidance of
14 doubt, this includes but is not limited to media organizations and governmental entities, including
15 the Digital, Culture, Media and Sport Committee of the House of Commons (“DCMS
16 Committee”).

17 **RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS NO. 2**

18 Responding Party objects to the request to the extent it seeks information that is protected
19 from disclosure by the attorney-client privilege, the work product doctrine, and any other
20 applicable privilege or doctrine protecting such information from disclosure.

21 Responding Party objects to the request as unduly burdensome in light of the fact that Mr.
22 Kramer has complied with the Court’s November 30, 2018 Order and has provided the electronic
23 devices on which the information sought may be located to the Forensic Examiner and, as a result,
24 the Responding Party does not have access to such information.

25 Responding Party objects to the request on the ground that it is overbroad in that it includes
26 within its scope documents concerning the drafting and filing of the referenced court filings and
27 which have no relevance to the matters currently at issue, and therefore appear requested with the
28 purpose of harassing Responding Party and Mr. Kramer

1 Responding Party objects to the request to any other extent that it is vague, overly broad,
2 burdensome, and/or seeks information that is neither material, necessary, or likely to lead to the
3 discovery of admissible evidence.

4 Responding Party objects to the request on the ground and to the extent that it may not be
5 possible to identify responsive documents based on the wording of the request.

6 Responding Party objects to the request to the extent that the time for which production is
7 demanded is unreasonably short, particularly when considered in combination with the
8 aforementioned over-breadth of the request and the inability to access information potentially
9 subject to the request.

10 Responding Party further objects on the ground that the dated noticed for production of
11 documents is two days prior to that allowed under the Court's November 30, 2018 Order.

12 Responding Party objects to the request to the extent it seeks confidential financial,
13 proprietary, business or personal information.

14 Responding Party objects to the request to the extent it impermissibly seeks to compel
15 through its phrasing the admission by Responding Party that any particular event occurred. To the
16 extent that Responding Party provides responses to the request such responses do not constitute
17 any such admission that any such particular event occurred.

18 Responding Party objects to the request to the extent it assumes facts that have not been
19 established, that are not true, or that are inaccurate.

20 Responding Party objects to the request to the extent it requires answers greater than,
21 beyond the requirements of, and/or at variance to applicable California law.

22 Responding Party objects to the request to the extent it does not adequately define the
23 terms used in them.

24 Responding Party objects to the request to the extent it seeks information that is not in
25 Responding Party's possession, custody or control.

26 Responding Party objects to the request to the extent it seeks to impose an obligation on
27 Responding Party to provide information for or on behalf of any person or entity other than
28 Responding Party.

1 Responding Party objects to the request to the extent that the discovery sought is
2 unreasonably cumulative or duplicative, or is obtainable from some other source that is more
3 convenient, less burdensome or less expensive.

4 The objections and responses herein are made without waiver of and with specific
5 preservation of all objections as to competency, relevancy, materiality, privilege, and admissibility
6 of the document or the subject matter thereof as evidence for any purpose and any proceeding in
7 this action (including trial) and in other actions. Subject to and without waiving the preceding
8 objections, or admitting to the validity of the terms of the request, Responding Party responds:

9 Responding Party will make a reasonable and diligent search for responsive documents,
10 and, to the extent any responsive documents are found and they are not covered by the attorney-
11 client, attorney work product, or any other privilege, will produce such documents – though, due
12 to the unreasonably short time for production and the fact that Mr. Kramer does not have current
13 access to his electronic devices on which such documents might be located, responsive
14 documents cannot be produced on the date requested. Responding Party will cooperate with
15 Facebook’s counsel to agree to a schedule for production of documents.

16 **REQUEST FOR PRODUCTION OF DOCUMENTS NO. 3**

17 Documents sufficient to show the identity of all individuals or entities with whom
18 Theodore Kramer, Thomas Kramer, David Godkin, James Kruzer, and Stuart Gross, or any other
19 agent or representative of Six4Three, discussed Facebook’s anti-SLAPP motion, Six4Three’s
20 opposition to Facebook’s anti-SLAPP motion, the Godkin Declaration or exhibits thereto, or
21 other Facebook confidential information.

22 **RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS NO. 3**

23 Responding Party objects to the request to the extent it seeks information that is protected
24 from disclosure by the attorney-client privilege, the work product doctrine, and any other
25 applicable privilege or doctrine protecting such information from disclosure.

26 Responding Party objects to the request as unduly burdensome in light of the fact that Mr.
27 Kramer has complied with the Court’s November 30, 2018 Order and has provided the electronic
28 devices on which the information sought may be located to the Forensic Examiner and, as a result,

1 the Responding Party does not have access to such information.

2 Responding Party objects to the request on the ground that it is overbroad in that it includes
3 within its scope documents concerning the drafting and filing of the referenced court filings and
4 which have no relevance to the matters currently at issue, and therefore appear requested with the
5 purpose of harassing Responding Party and Mr. Kramer

6 Responding Party objects to the request to any other extent that it is vague, overly broad,
7 burdensome, and/or seeks information that is neither material, necessary, or likely to lead to the
8 discovery of admissible evidence.

9 Responding Party objects to the request on the ground and to the extent that it may not be
10 possible to identify responsive documents based on the wording of the request.

11 Responding Party objects to the request to the extent that the time for which production is
12 demanded is unreasonably short, particularly when considered in combination with the
13 aforementioned over-breadth of the request and the inability to access information potentially
14 subject to the request.

15 Responding Party further objects on the ground that the dated noticed for production of
16 documents is two days prior to that allowed under the Court's November 30, 2018 Order.

17 Responding Party objects to the request to the extent it seeks confidential financial,
18 proprietary, business or personal information.

19 Responding Party objects to the request to the extent it impermissibly seeks to compel
20 through its phrasing the admission by Responding Party that any particular event occurred. To the
21 extent that Responding Party provides responses to the request such responses do not constitute
22 any such admission that any such particular event occurred.

23 Responding Party objects to the request to the extent it assumes facts that have not been
24 established, that are not true, or that are inaccurate.

25 Responding Party objects to the request to the extent it requires answers greater than,
26 beyond the requirements of, and/or at variance to applicable California law.

27 Responding Party objects to the request to the extent it does not adequately define the
28 terms used in them.

1 Responding Party objects to the request to the extent it seeks information that is not in
2 Responding Party's possession, custody or control.

3 Responding Party objects to the request to the extent it seeks to impose an obligation on
4 Responding Party to provide information for or on behalf of any person or entity other than
5 Responding Party.

6 Responding Party objects to the request to the extent that the discovery sought is
7 unreasonably cumulative or duplicative, or is obtainable from some other source that is more
8 convenient, less burdensome or less expensive.

9 The objections and responses herein are made without waiver of and with specific
10 preservation of all objections as to competency, relevancy, materiality, privilege, and admissibility
11 of the document or the subject matter thereof as evidence for any purpose and any proceeding in
12 this action (including trial) and in other actions. Subject to and without waiving the preceding
13 objections, or admitting to the validity of the terms of the request, Responding Party responds:

14 Responding Party will make a reasonable and diligent search for responsive documents,
15 and, to the extent any responsive documents are found and they are not covered by the attorney-
16 client, attorney work product, or any other privilege, will produce such documents – though, due
17 to the unreasonably short time for production and the fact that Mr. Kramer does not have current
18 access to his electronic devices on which such documents might be located, responsive
19 documents cannot be produced on the date requested. Responding Party will cooperate with
20 Facebook's counsel to agree to a schedule for production of documents.

21 **REQUEST FOR PRODUCTION OF DOCUMENTS NO. 4**

22 All emails and attachments exchanged between Mr. Kramer and Damian Collins.

23 **RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS NO. 4**

24 Responding Party objects to the request to the extent it seeks information that is protected
25 from disclosure by the attorney-client privilege, the work product doctrine, and any other
26 applicable privilege or doctrine protecting such information from disclosure.

27 Responding Party objects to the request as unduly burdensome in light of the fact that Mr.
28 Kramer has complied with the Court's November 30, 2018 Order and has provided the electronic

1 devices on which the information sought may be located to the Forensic Examiner and, as a result,
2 the Responding Party does not have access to such information.

3 Responding Party objects to the request to the extent that the time for which production is
4 demanded is unreasonably short, particularly when considered in combination with the
5 aforementioned over-breadth of the request and the inability to access information potentially
6 subject to the request.

7 Responding Party further objects on the ground that the dated noticed for production of
8 documents is two days prior to that allowed under the Court's November 30, 2018 Order.

9 Responding Party objects to the request to the extent it impermissibly seeks to compel
10 through its phrasing the admission by Responding Party that any particular event occurred. To the
11 extent that Responding Party provides responses to the request such responses do not constitute
12 any such admission that any such particular event occurred.

13 Responding Party objects to the request to the extent it assumes facts that have not been
14 established, that are not true, or that are inaccurate.

15 Responding Party objects to the request to the extent it requires answers greater than,
16 beyond the requirements of, and/or at variance to applicable California law.

17 Responding Party objects to the request to the extent it does not adequately define the
18 terms used in them.

19 Responding Party objects to the request to the extent it seeks information that is not in
20 Responding Party's possession, custody or control.

21 Responding Party objects to the request to the extent it seeks to impose an obligation on
22 Responding Party to provide information for or on behalf of any person or entity other than
23 Responding Party.

24 Responding Party objects to the request to the extent that the discovery sought is
25 unreasonably cumulative or duplicative, or is obtainable from some other source that is more
26 convenient, less burdensome or less expensive.

27 The objections and responses herein are made without waiver of and with specific
28 preservation of all objections as to competency, relevancy, materiality, privilege, and admissibility

1 of the document or the subject matter thereof as evidence for any purpose and any proceeding in
2 this action (including trial) and in other actions. Subject to and without waiving the preceding
3 objections, or admitting to the validity of the terms of the request, Responding Party responds:

4 Responding Party will make a reasonable and diligent search for responsive documents,
5 and, to the extent any responsive documents are found and they are not covered by the attorney-
6 client, attorney work product, or any other privilege, will produce such documents – though, due
7 to the unreasonably short time for production and the fact that Mr. Kramer does not have current
8 access to his electronic devices on which such documents might be located, responsive
9 documents cannot be produced on the date requested. Responding Party will cooperate with
10 Facebook’s counsel to agree to a schedule for production of documents.

11 **REQUEST FOR PRODUCTION OF DOCUMENTS NO. 5**

12 All logs or other records pertaining to the Six4Three Dropbox account that Mr. Kramer
13 accessed from his laptop, including all available or recoverable information about what
14 documents were uploaded to the account and by whom, what documents were downloaded from
15 the account and by whom, what documents were deleted from the account and by whom, when
16 the account was cached or synched locally and on what devices, and all individuals that had
17 access to the account and when.

18 **RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS NO. 5**

19 Responding Party objects to the request to the extent it seeks information that is protected
20 from disclosure by the attorney-client privilege, the work product doctrine, and any other
21 applicable privilege or doctrine protecting such information from disclosure.

22 Responding Party objects to the request as unduly burdensome in light of the fact that Mr.
23 Scaramellino has complied with the Court’s November 30, 2018 Order and has provided the
24 electronic devices on which the information sought may be located to the Forensic Examiner and,
25 as a result, the Responding Party does not have access to such information.

26 Responding Party objects to the request to any other extent that it is vague, overly broad,
27 burdensome, and/or seeks information that is neither material, necessary, or likely to lead to the
28 discovery of admissible evidence.

1 Responding Party objects to the request on the ground and to the extent that it may not be
2 possible to identify responsive documents based on the wording of the request.

3 Responding Party objects to the request to the extent that the time for which production is
4 demanded is unreasonably short, particularly when considered in combination with the
5 aforementioned over-breadth of the request and the inability to access information potentially
6 subject to the request.

7 Responding Party further objects on the ground that the dated noticed for production of
8 documents is two days prior to that allowed under the Court's November 30, 2018 Order.

9 Responding Party objects to the request to the extent it seeks confidential financial,
10 proprietary, business or personal information.

11 Responding Party objects to the request to the extent it impermissibly seeks to compel
12 through its phrasing the admission by Responding Party that any particular event occurred. To the
13 extent that Responding Party provides responses to the request such responses do not constitute
14 any such admission that any such particular event occurred.

15 Responding Party objects to the request to the extent it assumes facts that have not been
16 established, that are not true, or that are inaccurate.

17 Responding Party objects to the request to the extent it requires answers greater than,
18 beyond the requirements of, and/or at variance to applicable California law.

19 Responding Party objects to the request to the extent it does not adequately define the
20 terms used in them.

21 Responding Party objects to the request to the extent it seeks information that is not in
22 Responding Party's possession, custody or control. In particular, Responding Party objects to the
23 request on the ground that the information it seeks is available only to the Forensic Examiner, who
24 has sole access to account in question.

25 Responding Party objects to the request to the extent it seeks to impose an obligation on
26 Responding Party to provide information for or on behalf of any person or entity other than
27 Responding Party.

28 Responding Party objects to the request to the extent that the discovery sought is

1 unreasonably cumulative or duplicative, or is obtainable from some other source that is more
2 convenient, less burdensome or less expensive.

3 The objections and responses herein are made without waiver of and with specific
4 preservation of all objections as to competency, relevancy, materiality, privilege, and admissibility
5 of the document or the subject matter thereof as evidence for any purpose and any proceeding in
6 this action (including trial) and in other actions. Subject to and without waiving the preceding
7 objections, or admitting to the validity of the terms of the request, Responding Party responds:

8 Responding Party will make a reasonable and diligent search for responsive documents,
9 and, to the extent any responsive documents are found and they are not covered by the attorney-
10 client, attorney work product, or any other privilege, will produce such documents – though, due
11 to the unreasonably short time for production and the fact that Mr. Kramer does not have current
12 access to his electronic devices on which such documents might be located, responsive
13 documents cannot be produced on the date requested. Responding Party will cooperate with
14 Facebook’s counsel to agree to a schedule for production of documents.

15 **REQUEST FOR PRODUCTION OF DOCUMENTS NO. 6**

16 All emails or other communications amongst and between Mr. Gross or anyone at Gross
17 & Klein, Mr. Godkin or anyone at Birnbaum & Godkin, Mr. Kramer, Mr. Kramer or any other
18 agent, attorney, or individual associated with Six4Three from May 1, 2018 to the present
19 regarding Facebook’s anti-SLAPP motion, Six4Three’s opposition to Facebook’s anti-SLAPP
20 motion, the Godkin Declaration or exhibits thereto, or other Facebook’s confidential or highly
21 confidential information. For avoidance of doubt, this would include without limitation
22 communications relating to contacts with the DCMS Committee, *The Guardian*, *The Observer*, or
23 other third parties.

24 **RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS NO. 6**

25 Responding Party objects to the request to the extent it seeks information that is protected
26 from disclosure by the attorney-client privilege, the work product doctrine, or any other applicable
27 privilege or doctrine protecting such information from disclosure.

28 Responding Party objects to the request as unduly burdensome in light of the fact that Mr.

1 Kramer has complied with the Court's November 30, 2018 Order and has provided the electronic
2 devices on which the information sought may be located to the Forensic Examiner and, as a result,
3 the Responding Party does not have access to such information.

4 Responding Party objects to the request on the ground that it is overbroad in that it includes
5 within its scope documents which have no relevance to the matters currently at issue, and therefore
6 appear requested with the purpose of harassing Responding Party and Mr. Kramer.

7 Responding Party objects to the request to any other extent that it is vague, overly broad,
8 burdensome, and/or seeks information that is neither material, necessary, or likely to lead to the
9 discovery of admissible evidence.

10 Responding Party objects to the request on the ground and to the extent that it may not be
11 possible to identify responsive documents based on the wording of the request.

12 Responding Party objects to the request to the extent that the time for which production is
13 demanded is unreasonably short, particularly when considered in combination with the
14 aforementioned over-breadth of the request and the inability to access information potentially
15 subject to the request.

16 Responding Party further objects on the ground that the dated noticed for production of
17 documents is two days prior to that allowed under the Court's November 30, 2018 Order.

18 Responding Party objects to the request to the extent it seeks confidential financial,
19 proprietary, business or personal information.

20 Responding Party objects to the request to the extent it impermissibly seeks to compel
21 through its phrasing the admission by Responding Party that any particular event occurred. To the
22 extent that Responding Party provides responses to the request such responses do not constitute
23 any such admission that any such particular event occurred.

24 Responding Party objects to the request to the extent it assumes facts that have not been
25 established, that are not true, or that are inaccurate.

26 Responding Party objects to the request to the extent it requires answers greater than,
27 beyond the requirements of, and/or at variance to applicable California law.

28 Responding Party objects to the request to the extent it does not adequately define the

1 terms used in them.

2 Responding Party objects to the request to the extent it seeks information that is not in
3 Responding Party's possession, custody or control.

4 Responding Party objects to the request to the extent it seeks to impose an obligation on
5 Responding Party to provide information for or on behalf of any person or entity other than
6 Responding Party.

7 Responding Party objects to the request to the extent that the discovery sought is
8 unreasonably cumulative or duplicative, or is obtainable from some other source that is more
9 convenient, less burdensome or less expensive.

10 The objections and responses herein are made without waiver of and with specific
11 preservation of all objections as to competency, relevancy, materiality, privilege, and admissibility
12 of the document or the subject matter thereof as evidence for any purpose and any proceeding in
13 this action (including trial) and in other actions. Subject to and without waiving the preceding
14 objections, or admitting to the validity of the terms of the request, Responding Party responds:

15 Responding Party will make a reasonable and diligent search for responsive documents,
16 and, to the extent any responsive documents are found and they are not covered by the attorney-
17 client, attorney work product, or any other privilege, will produce such documents – though, due
18 to the unreasonably short time for production and the fact that Mr. Kramer does not have current
19 access to his electronic devices on which such documents might be located, responsive documents
20 cannot be produced on the date requested. Responding Party will cooperate with Facebook's
21 counsel to agree to a schedule for production of documents.

22 Dated: December 2, 2018

Respectfully Submitted,

23 GROSS & KLEIN LLP

24 BIRNBAUM & GODKIN, LLP

25 By: 
26 Stuart G. Gross, Esq.

27 David S. Godkin (admitted *pro hac vice*)
28 James E. Kruzer (admitted *pro hac vice*)

Attorneys for Plaintiff Six4Three, LLC

EXHIBIT 40

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Attorneys for Plaintiff,
SIX4THREE, LLC, a Delaware
limited liability company

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN MATEO

SIX4THREE, LLC, a Delaware limited
liability company,

Plaintiff,

v.

FACEBOOK, INC., et al.,

Defendants.

Case No. CIV 533328

**Assigned for all purposes to Hon. V.
Raymond Swope, Dept. 23**

**OBJECTIONS AND RESPONSES TO
FACEBOOK'S NOTICE OF
DEPOSITION WITH REQUEST FOR
THE PRODUCTION OF DOCUMENTS
TO THOMAS SCARAMELLINO**

PROPOUNDING PARTY: FACEBOOK

RESPONDING PARTY:

SIX4THREE, LLC

SET NUMBER: ONE

1 Responding Party has not fully completed its investigation of the facts relating to this
2 matter. All the answers contained herein are based upon such information and documents which
3 are presently available and specifically known to Responding Party and disclose only those
4 contentions which presently occur to such Responding Party. It is anticipated that further
5 discovery, independent investigation, legal research and analysis will supply additional facts, add
6 meaning to the known facts, as well as establish entirely new factual conclusions and legal
7 contentions, all of which may lead to substantial additions, changes in and variations from the
8 contentions herein set forth. The following responses to the notice of deposition and requests for
9 production of documents are given without prejudice to Responding Party's right to produce
10 evidence of any subsequently discovered fact or facts which Responding Party may later recall.
11 Responding Party accordingly reserves the right to change any and all answers herein as
12 additional facts are ascertained, analyses are made, legal research is completed and contentions
13 are made.

14 The answers contained herein are made in a good faith effort to supply as much factual
15 information and as much specification of legal contentions as is presently known but should in no
16 way be in prejudice of Responding Party in relation to further discovery, research and analysis.

17 **I. RESPONSES TO NOTICE OF DEPOSITION**

18 Responding Party objects to the notice of deposition of Mr. Scaramellino on the ground
19 that Mr. Scaramellino is a member of Responding Party's legal team, and Defendants have not
20 met their burden to show his deposition is required, notwithstanding the very strong presumption
21 against the deposition of the attorneys of an opposing party. Responding Party further objects to
22 the notice of deposition of Mr. Scaramellino on the ground that Mr. Scaramellino resides in New
23 York and the location of the deposition is California. Responding party further objects to the
24 notice of deposition of Mr. Scaramellino on the ground that the date and time noticed for Mr.
25 Scaramellino's deposition provides for an unreasonably short time for Mr. Scaramellino to
26 prepare for his deposition and travel to the deposition site and is otherwise unduly inconvenient
27 for Mr. Scaramellino and counsel and was chosen without prior consultation with counsel.
28

1 Responding Party further objects on the ground that the date noticed for the deposition is two
2 days prior to that allowed under the Court’s November 30, 2018 Order.

3 **II. RESPONSES TO REQUESTS FOR PRODUCTION OF DOCUMENTS**

4 **REQUEST FOR PRODUCTION OF DOCUMENTS NO. 1**

5 Documents (e.g., phone logs) sufficient to show all telephonic and/or video conference
6 communications between Six4Three, including without limitation Theodore Kramer, Thomas
7 Scaramellino, David Godkin, James Kruzer, Stuart Gross, and any other agent or representative of
8 Six4Three, and any individual or entity regarding Facebook’s anti-SLAPP motion, Six4Three’s
9 opposition to Facebook’s anti-SLAPP motion, the Godkin Declaration in support of Six4Three’s
10 opposition to Facebook’s anti-SLAPP motion (“Godkin Declaration”) or exhibits thereto, or other
11 Facebook confidential information. For avoidance of doubt, this includes but is not limited to
12 media organizations and governmental entities, including the Digital, Culture, Media and Sport
13 Committee of the House of Commons (“DCMS Committee”).

14 **RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS NO. 1**

15 Responding Party objects to the request to the extent it seeks information that is protected
16 from disclosure by the attorney-client privilege, the work product doctrine, and any other
17 applicable privilege or doctrine protecting such information from disclosure.

18 Responding Party objects to the request as unduly burdensome in light of the fact that Mr.
19 Scaramellino has complied with the Court’s November 30, 2018 Order and has provided the
20 electronic devices on which the information sought may be located to the Forensic Examiner and,
21 as a result, the Responding Party does not have access to such information.

22 Responding Party objects to the request on the ground that it is overbroad in that it includes
23 within its scope documents concerning the drafting and filing of the referenced court filings and
24 which have no relevance to the matters currently at issue, and therefore appear requested with the
25 purpose of harassing Responding Party and Mr. Scaramellino.

26 Responding Party objects to the request to any other extent that it is vague, overly broad,
27 burdensome, and/or seeks information that is neither material, necessary, or likely to lead to the
28

1 discovery of admissible evidence.

2 Responding Party objects to the request on the ground and to the extent that it may not be
3 possible to identify responsive documents based on the wording of the request.

4 Responding Party objects to the request to the extent that the time for which production is
5 demanded is unreasonably short, particularly when considered in combination with the
6 aforementioned over-breadth of the request and the inability to access information potentially
7 subject to the request.

8 Responding Party further objects on the ground that the dated noticed for production of
9 documents is two days prior to that allowed under the Court's November 30, 2018 Order.

10 Responding Party objects to the request to the extent it seeks confidential financial,
11 proprietary, business or personal information.

12 Responding Party objects to the request to the extent it impermissibly seeks to compel
13 through its phrasing the admission by Responding Party that any particular event occurred. To the
14 extent that Responding Party provides responses to the request such responses do not constitute
15 any such admission that any such particular event occurred.

16 Responding Party objects to the request to the extent it assumes facts that have not been
17 established, that are not true, or that are inaccurate.

18 Responding Party objects to the request to the extent it requires answers greater than,
19 beyond the requirements of, and/or at variance to applicable California law.

20 Responding Party objects to the request to the extent it does not adequately define the
21 terms used in them.

22 Responding Party objects to the request to the extent it seeks information that is not in
23 Responding Party's possession, custody or control.

24 Responding Party objects to the request to the extent it seeks to impose an obligation on
25 Responding Party to provide information for or on behalf of any person or entity other than
26 Responding Party.

27 Responding Party objects to the request to the extent that the discovery sought is
28 unreasonably cumulative or duplicative, or is obtainable from some other source that is more

1 convenient, less burdensome or less expensive.

2 The objections and responses herein are made without waiver of and with specific
3 preservation of all objections as to competency, relevancy, materiality, privilege, and admissibility
4 of the document or the subject matter thereof as evidence for any purpose and any proceeding in
5 this action (including trial) and in other actions. Subject to and without waiving the preceding
6 objections, or admitting to the validity of the terms of the request, Responding Party responds:

7 Responding Party will make a reasonable and diligent search for responsive documents,
8 and, to the extent any responsive documents are found and they are not covered by the attorney-
9 client, attorney work product, or any other privilege, will produce such documents – though, due
10 to the unreasonably short time for production and the fact that Mr. Scaramellino does not have
11 current access to his electronic devices on which such documents might be located, responsive
12 documents cannot be produced on the date requested. Responding Party will cooperate with
13 Facebook’s counsel to agree to a schedule for production of documents.

14 **REQUEST FOR PRODUCTION OF DOCUMENTS NO. 2**

15 All communications between Six4Three, including without limitation Theodore Kramer,
16 Thomas Scaramellino, David Godkin, James Kruzer, Stuart Gross, and any other agent or
17 representative of Six4Three, and any third party individual or entity regarding Facebook’s anti-
18 SLAPP motion, Six4Three’s opposition to Facebook’s anti-SLAPP motion, the Godkin
19 Declaration or exhibits thereto, or other Facebook confidential information. For the avoidance of
20 doubt, this includes but is not limited to media organizations and governmental entities, including
21 the Digital, Culture, Media and Sport Committee of the House of Commons (“DCMS
22 Committee”).

23 **RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS NO. 2**

24 Responding Party objects to the request to the extent it seeks information that is protected
25 from disclosure by the attorney-client privilege, the work product doctrine, and any other
26 applicable privilege or doctrine protecting such information from disclosure.

27 Responding Party objects to the request as unduly burdensome in light of the fact that Mr.
28 Scaramellino has complied with the Court’s November 30, 2018 Order and has provided the

1 electronic devices on which the information sought may be located to the Forensic Examiner and,
2 as a result, the Responding Party does not have access to such information.

3 Responding Party objects to the request on the ground that it is overbroad in that it includes
4 within its scope documents concerning the drafting and filing of the referenced court filings and
5 which have no relevance to the matters currently at issue, and therefore appear requested with the
6 purpose of harassing Responding Party and Mr. Scaramellino.

7 Responding Party objects to the request to any other extent that it is vague, overly broad,
8 burdensome, and/or seeks information that is neither material, necessary, or likely to lead to the
9 discovery of admissible evidence.

10 Responding Party objects to the request on the ground and to the extent that it may not be
11 possible to identify responsive documents based on the wording of the request.

12 Responding Party objects to the request to the extent that the time for which production is
13 demanded is unreasonably short, particularly when considered in combination with the
14 aforementioned over-breadth of the request and the inability to access information potentially
15 subject to the request.

16 Responding Party further objects on the ground that the dated noticed for production of
17 documents is two days prior to that allowed under the Court's November 30, 2018 Order.

18 Responding Party objects to the request to the extent it seeks confidential financial,
19 proprietary, business or personal information.

20 Responding Party objects to the request to the extent it impermissibly seeks to compel
21 through its phrasing the admission by Responding Party that any particular event occurred. To the
22 extent that Responding Party provides responses to the request such responses do not constitute
23 any such admission that any such particular event occurred.

24 Responding Party objects to the request to the extent it assumes facts that have not been
25 established, that are not true, or that are inaccurate.

26 Responding Party objects to the request to the extent it requires answers greater than,
27 beyond the requirements of, and/or at variance to applicable California law.

28 Responding Party objects to the request to the extent it does not adequately define the

1 terms used in them.

2 Responding Party objects to the request to the extent it seeks information that is not in
3 Responding Party's possession, custody or control.

4 Responding Party objects to the request to the extent it seeks to impose an obligation on
5 Responding Party to provide information for or on behalf of any person or entity other than
6 Responding Party.

7 Responding Party objects to the request to the extent that the discovery sought is
8 unreasonably cumulative or duplicative, or is obtainable from some other source that is more
9 convenient, less burdensome or less expensive.

10 The objections and responses herein are made without waiver of and with specific
11 preservation of all objections as to competency, relevancy, materiality, privilege, and admissibility
12 of the document or the subject matter thereof as evidence for any purpose and any proceeding in
13 this action (including trial) and in other actions. Subject to and without waiving the preceding
14 objections, or admitting to the validity of the terms of the request, Responding Party responds:

15 Responding Party will make a reasonable and diligent search for responsive documents,
16 and, to the extent any responsive documents are found and they are not covered by the attorney-
17 client, attorney work product, or any other privilege, will produce such documents – though, due
18 to the unreasonably short time for production and the fact that Mr. Scaramellino does not have
19 current access to his electronic devices on which such documents might be located, responsive
20 documents cannot be produced on the date requested. Responding Party will cooperate with
21 Facebook's counsel to agree to a schedule for production of documents.

22 **REQUEST FOR PRODUCTION OF DOCUMENTS NO. 3**

23 Documents sufficient to show the identity of all individuals or entities with whom
24 Theodore Kramer, Thomas Scaramellino, David Godkin, James Kruzer, and Stuart Gross, or any
25 other agent or representative of Six4Three, discussed Facebook's anti-SLAPP motion,
26 Six4Three's opposition to Facebook's anti-SLAPP motion, the Godkin Declaration or exhibits
27 thereto, or other Facebook confidential information.

RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS NO. 3

Responding Party objects to the request to the extent it seeks information that is protected from disclosure by the attorney-client privilege, the work product doctrine, and any other applicable privilege or doctrine protecting such information from disclosure.

Responding Party objects to the request as unduly burdensome in light of the fact that Mr. Scaramellino has complied with the Court's November 30, 2018 Order and has provided the electronic devices on which the information sought may be located to the Forensic Examiner and, as a result, the Responding Party does not have access to such information.

Responding Party objects to the request on the ground that it is overbroad in that it includes within its scope documents concerning the drafting and filing of the referenced court filings and which have no relevance to the matters currently at issue, and therefore appear requested with the purpose of harassing Responding Party and Mr. Scaramellino.

Responding Party objects to the request to any other extent that it is vague, overly broad, burdensome, and/or seeks information that is neither material, necessary, or likely to lead to the discovery of admissible evidence.

Responding Party objects to the request on the ground and to the extent that it may not be possible to identify responsive documents based on the wording of the request.

Responding Party objects to the request to the extent that the time for which production is demanded is unreasonably short, particularly when considered in combination with the aforementioned over-breadth of the request and the inability to access information potentially subject to the request.

Responding Party further objects on the ground that the dated noticed for production of documents is two days prior to that allowed under the Court's November 30, 2018 Order.

Responding Party objects to the request to the extent it seeks confidential financial, proprietary, business or personal information.

Responding Party objects to the request to the extent it impermissibly seeks to compel through its phrasing the admission by Responding Party that any particular event occurred. To the extent that Responding Party provides responses to the request such responses do not constitute

1 any such admission that any such particular event occurred.

2 Responding Party objects to the request to the extent it assumes facts that have not been
3 established, that are not true, or that are inaccurate.

4 Responding Party objects to the request to the extent it requires answers greater than,
5 beyond the requirements of, and/or at variance to applicable California law.

6 Responding Party objects to the request to the extent it does not adequately define the
7 terms used in them.

8 Responding Party objects to the request to the extent it seeks information that is not in
9 Responding Party's possession, custody or control.

10 Responding Party objects to the request to the extent it seeks to impose an obligation on
11 Responding Party to provide information for or on behalf of any person or entity other than
12 Responding Party.

13 Responding Party objects to the request to the extent that the discovery sought is
14 unreasonably cumulative or duplicative, or is obtainable from some other source that is more
15 convenient, less burdensome or less expensive.

16 The objections and responses herein are made without waiver of and with specific
17 preservation of all objections as to competency, relevancy, materiality, privilege, and admissibility
18 of the document or the subject matter thereof as evidence for any purpose and any proceeding in
19 this action (including trial) and in other actions. Subject to and without waiving the preceding
20 objections, or admitting to the validity of the terms of the request, Responding Party responds:

21 Responding Party will make a reasonable and diligent search for responsive documents,
22 and, to the extent any responsive documents are found and they are not covered by the attorney-
23 client, attorney work product, or any other privilege, will produce such documents – though, due
24 to the unreasonably short time for production and the fact that Mr. Scaramellino does not have
25 current access to his electronic devices on which such documents might be located, responsive
26 documents cannot be produced on the date requested. Responding Party will cooperate with
27 Facebook's counsel to agree to a schedule for production of documents.
28

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 4

All emails and attachments exchanged between Mr. Kramer and Damian Collins.

RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS NO. 4

Responding Party objects to the request to the extent it seeks information that is protected from disclosure by the attorney-client privilege, the work product doctrine, and any other applicable privilege or doctrine protecting such information from disclosure.

Responding Party objects to the request as unduly burdensome in light of the fact that Mr. Scaramellino has complied with the Court's November 30, 2018 Order and has provided the electronic devices on which the information sought may be located to the Forensic Examiner and, as a result, the Responding Party does not have access to such information.

Responding Party objects to the request to the extent that the time for which production is demanded is unreasonably short, particularly when considered in combination with the aforementioned over-breadth of the request and the inability to access information potentially subject to the request.

Responding Party objects to the request to the extent it impermissibly seeks to compel through its phrasing the admission by Responding Party that any particular event occurred. To the extent that Responding Party provides responses to the request such responses do not constitute any such admission that any such particular event occurred.

Responding Party objects to the request to the extent it assumes facts that have not been established, that are not true, or that are inaccurate.

Responding Party objects to the request to the extent it requires answers greater than, beyond the requirements of, and/or at variance to applicable California law.

Responding Party objects to the request to the extent it does not adequately define the terms used in them.

Responding Party objects to the request to the extent it seeks information that is not in Responding Party's possession, custody or control.

Responding Party objects to the request to the extent it seeks to impose an obligation on Responding Party to provide information for or on behalf of any person or entity other than

1 Responding Party.

2 Responding Party objects to the request to the extent that the discovery sought is
3 unreasonably cumulative or duplicative, or is obtainable from some other source that is more
4 convenient, less burdensome or less expensive.

5 The objections and responses herein are made without waiver of and with specific
6 preservation of all objections as to competency, relevancy, materiality, privilege, and admissibility
7 of the document or the subject matter thereof as evidence for any purpose and any proceeding in
8 this action (including trial) and in other actions. Subject to and without waiving the preceding
9 objections, or admitting to the validity of the terms of the request, Responding Party responds:

10 Responding Party will make a reasonable and diligent search for responsive documents,
11 and, to the extent any responsive documents are found and they are not covered by the attorney-
12 client, attorney work product, or any other privilege, will produce such documents – though, due
13 to the unreasonably short time for production and the fact that Mr. Scaramellino does not have
14 current access to his electronic devices on which such documents might be located, responsive
15 documents cannot be produced on the date requested. Responding Party will cooperate with
16 Facebook’s counsel to agree to a schedule for production of documents.

17 **REQUEST FOR PRODUCTION OF DOCUMENTS NO. 5**

18 All logs or other records pertaining to the Six4Three Dropbox account that Mr. Kramer
19 accessed from his laptop, including all available or recoverable information about what
20 documents were uploaded to the account and by whom, what documents were downloaded from
21 the account and by whom, what documents were deleted from the account and by whom, when
22 the account was cached or synched locally and on what devices, and all individuals that had
23 access to the account and when.

24 **RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS NO. 5**

25 Responding Party objects to the request to the extent it seeks information that is protected
26 from disclosure by the attorney-client privilege, the work product doctrine, and any other
27 applicable privilege or doctrine protecting such information from disclosure.

28 Responding Party objects to the request as unduly burdensome in light of the fact that Mr.

1 Scaramellino has complied with the Court's November 30, 2018 Order and has provided the
2 electronic devices on which the information sought may be located to the Forensic Examiner and,
3 as a result, the Responding Party does not have access to such information.

4 Responding Party objects to the request to any other extent that it is vague, overly broad,
5 burdensome, and/or seeks information that is neither material, necessary, or likely to lead to the
6 discovery of admissible evidence.

7 Responding Party objects to the request on the ground and to the extent that it may not be
8 possible to identify responsive documents based on the wording of the request.

9 Responding Party objects to the request to the extent that the time for which production is
10 demanded is unreasonably short, particularly when considered in combination with the
11 aforementioned over-breadth of the request and the inability to access information potentially
12 subject to the request.

13 Responding Party objects to the request to the extent it seeks confidential financial,
14 proprietary, business or personal information.

15 Responding Party objects to the request to the extent it impermissibly seeks to compel
16 through its phrasing the admission by Responding Party that any particular event occurred. To the
17 extent that Responding Party provides responses to the request such responses do not constitute
18 any such admission that any such particular event occurred.

19 Responding Party objects to the request to the extent it assumes facts that have not been
20 established, that are not true, or that are inaccurate.

21 Responding Party objects to the request to the extent it requires answers greater than,
22 beyond the requirements of, and/or at variance to applicable California law.

23 Responding Party objects to the request to the extent it does not adequately define the
24 terms used in them.

25 Responding Party objects to the request to the extent it seeks information that is not in
26 Responding Party's possession, custody or control. In particular, Responding Party objects to the
27 request on the ground that the information it seeks is available only to the Forensic Examiner, who
28 has sole access to account in question.

1 Responding Party objects to the request to the extent it seeks to impose an obligation on
2 Responding Party to provide information for or on behalf of any person or entity other than
3 Responding Party.

4 Responding Party objects to the request to the extent that the discovery sought is
5 unreasonably cumulative or duplicative, or is obtainable from some other source that is more
6 convenient, less burdensome or less expensive.

7 The objections and responses herein are made without waiver of and with specific
8 preservation of all objections as to competency, relevancy, materiality, privilege, and admissibility
9 of the document or the subject matter thereof as evidence for any purpose and any proceeding in
10 this action (including trial) and in other actions. Subject to and without waiving the preceding
11 objections, or admitting to the validity of the terms of the request, Responding Party responds:

12 Responding Party will make a reasonable and diligent search for responsive documents,
13 and, to the extent any responsive documents are found and they are not covered by the attorney-
14 client, attorney work product, or any other privilege, will produce such documents – though, due
15 to the unreasonably short time for production and the fact that Mr. Scaramellino does not have
16 current access to his electronic devices on which such documents might be located, responsive
17 documents cannot be produced on the date requested. Responding Party will cooperate with
18 Facebook’s counsel to agree to a schedule for production of documents.

19 **REQUEST FOR PRODUCTION OF DOCUMENTS NO. 6**

20 All emails or other communications amongst and between Mr. Gross or anyone at Gross
21 & Klein, Mr. Godkin or anyone at Birnbaum & Godkin, Mr. Kramer, Mr. Scaramellino or any
22 other agent, attorney, or individual associated with Six4Three from May 1, 2018 to the present
23 regarding Facebook’s anti-SLAPP motion, Six4Three’s opposition to Facebook’s anti-SLAPP
24 motion, the Godkin Declaration or exhibits thereto, or other Facebook’s confidential or highly
25 confidential information. For avoidance of doubt, this would include without limitation
26 communications relating to contacts with the DCMS Committee, *The Guardian*, *The Observer*, or
27 other third parties.
28

RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS NO. 6

Responding Party objects to the request to the extent it seeks information that is protected from disclosure by the attorney-client privilege, the work product doctrine, or any other applicable privilege or doctrine protecting such information from disclosure.

Responding Party objects to the request as unduly burdensome in light of the fact that Mr. Scaramellino has complied with the Court's November 30, 2018 Order and has provided the electronic devices on which the information sought may be located to the Forensic Examiner and, as a result, the Responding Party does not have access to such information.

Responding Party objects to the request on the ground that it is overbroad in that it includes within its scope documents which have no relevance to the matters currently at issue, and therefore appear requested with the purpose of harassing Responding Party and Mr. Scaramellino.

Responding Party objects to the request to any other extent that it is vague, overly broad, burdensome, and/or seeks information that is neither material, necessary, or likely to lead to the discovery of admissible evidence.

Responding Party objects to the request on the ground and to the extent that it may not be possible to identify responsive documents based on the wording of the request.

Responding Party objects to the request to the extent that the time for which production is demanded is unreasonably short, particularly when considered in combination with the aforementioned over-breadth of the request and the inability to access information potentially subject to the request.

Responding Party further objects on the ground that the dated noticed for production of documents is two days prior to that allowed under the Court's November 30, 2018 Order.

Responding Party objects to the request to the extent it seeks confidential financial, proprietary, business or personal information.

Responding Party objects to the request to the extent it impermissibly seeks to compel through its phrasing the admission by Responding Party that any particular event occurred. To the extent that Responding Party provides responses to the request such responses do not constitute any such admission that any such particular event occurred.

1 Responding Party objects to the request to the extent it assumes facts that have not been
2 established, that are not true, or that are inaccurate.

3 Responding Party objects to the request to the extent it requires answers greater than,
4 beyond the requirements of, and/or at variance to applicable California law.

5 Responding Party objects to the request to the extent it does not adequately define the
6 terms used in them.

7 Responding Party objects to the request to the extent it seeks information that is not in
8 Responding Party's possession, custody or control.

9 Responding Party objects to the request to the extent it seeks to impose an obligation on
10 Responding Party to provide information for or on behalf of any person or entity other than
11 Responding Party.

12 Responding Party objects to the request to the extent that the discovery sought is
13 unreasonably cumulative or duplicative, or is obtainable from some other source that is more
14 convenient, less burdensome or less expensive.

15 The objections and responses herein are made without waiver of and with specific
16 preservation of all objections as to competency, relevancy, materiality, privilege, and admissibility
17 of the document or the subject matter thereof as evidence for any purpose and any proceeding in
18 this action (including trial) and in other actions. Subject to and without waiving the preceding
19 objections, or admitting to the validity of the terms of the request, Responding Party responds:


20 Responding Party will make a reasonable and diligent search for responsive documents,
21 and, to the extent any responsive documents are found and they are not covered by the attorney-
22 client, attorney work product, or any other privilege, will produce such documents – though, due
23 to the unreasonably short time for production and the fact that Mr. Scaramellino does not have
24 current access to his electronic devices on which such documents might be located, responsive
25 documents cannot be produced on the date requested. Responding Party will cooperate with
26 Facebook's counsel to agree to a schedule for production of documents.

1 Dated: December 2, 2018

Respectfully Submitted,

2 GROSS & KLEIN LLP

3 BIRNBAUM & GODKIN, LLP

4 By: 
5 Stuart G. Gross, Esq.
6 David S. Godkin (admitted *pro hac vice*)
7 James E. Kruzer (admitted *pro hac vice*)

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28 Attorneys for Plaintiff Six4Three, LLC

EXHIBIT 41

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10 Attorneys for Plaintiff,
SIX4THREE, LLC, a Delaware
11 limited liability company

12 SUPERIOR COURT OF CALIFORNIA

13 COUNTY OF SAN MATEO

14 SIX4THREE, LLC, a Delaware limited
15 liability company,

16 Plaintiff,

17 v.

18 FACEBOOK, INC., et al.,

19 Defendants.

) Case No. CIV 533328
)
)

) **Assigned for all purposes to Hon. V.**
) **Raymond Swope, Dept. 23**
)

) **OBJECTIONS AND RESPONSES TO**
) **FACEBOOK'S NOTICE OF**
) **DEPOSITION WITH REQUEST FOR**
) **THE PRODUCTION OF DOCUMENTS**
) **TO DAVID S. GODKIN**
)

20
21 **PROPOUNDING PARTY: FACEBOOK**

22 **RESPONDING PARTY:**

23 SIX4THREE, LLC

24 **SET NUMBER: ONE**
25
26
27
28

1 Responding Party has not fully completed its investigation of the facts relating to this
2 matter. All the answers contained herein are based upon such information and documents which
3 are presently available and specifically known to Responding Party and disclose only those
4 contentions which presently occur to such Responding Party. It is anticipated that further
5 discovery, independent investigation, legal research and analysis will supply additional facts,
6 add meaning to the known facts, as well as establish entirely new factual conclusions and legal
7 contentions, all of which may lead to substantial additions, changes in and variations from the
8 contentions herein set forth. The following responses to the notice of deposition and requests for
9 production of documents are given without prejudice to Responding Party's right to produce
10 evidence of any subsequently discovered fact or facts which Responding Party may later recall.
11 Responding Party accordingly reserves the right to change any and all answers herein as
12 additional facts are ascertained, analyses are made, legal research is completed and contentions
13 are made.

14 The answers contained herein are made in a good faith effort to supply as much factual
15 information and as much specification of legal contentions as is presently known but should in
16 no way be in prejudice of Responding Party in relation to further discovery, research and
17 analysis.

18 **I. RESPONSES TO NOTICE OF DEPOSITION**

19 Responding Party objects to the notice of deposition of Mr. Godkin on the ground that
20 Mr. Godkin is a member of Responding Party's legal team, and Defendants have not met their
21 burden to show his deposition is required, notwithstanding the very strong presumption against
22 the deposition of the attorneys of an opposing party. Responding party further objects to the
23 notice of deposition of Mr. Godkin on the ground that the date and time noticed for Mr.
24 Godkin's deposition provides for an unreasonably short time for Mr. Godkin to engage counsel
25 to represent him, if he so chooses, or prepare for his deposition, and is otherwise unduly
26 inconvenient for Mr. Godkin and counsel and was chosen without prior consultation with
27 counsel.
28

1 **II. RESPONSES TO REQUESTS FOR PRODUCTION OF DOCUMENTS**
2 **REQUEST FOR PRODUCTION OF DOCUMENTS NO. 1**

3 Documents (e.g., phone logs) sufficient to show all telephonic and/or video conference
4 communications between Six4Three, including without limitation Theodore Kramer, Thomas
5 Scaramellino, David Godkin, James Kruzer, Stuart Gross, and any other agent or representative
6 of Six4Three, and any individual or entity regarding Facebook's anti-SLAPP motion,
7 Six4Three's opposition to Facebook's anti-SLAPP motion, the Godkin Declaration in support
8 of Six4Three's opposition to Facebook's anti-SLAPP motion ("Godkin Declaration") or
9 exhibits thereto, or other Facebook confidential information. For avoidance of doubt, this
10 includes but is not limited to media organizations and governmental entities, including the
11 Digital, Culture, Media and Sport Committee of the House of Commons ("DCMS Committee").

12 **RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS NO. 1**

13 Responding Party objects to the request to the extent it seeks information that is
14 protected from disclosure by the attorney-client privilege, the work product doctrine, and any
15 other applicable privilege or doctrine protecting such information from disclosure.

16 Responding Party objects to the request on the ground that it is overbroad in that it
17 includes within its scope documents concerning the drafting and filing of the referenced court
18 filings and which have no relevance to the matters currently at issue, and therefore appear
19 requested with the purpose of harassing Responding Party and Mr. Godkin.

20 Responding Party objects to the request to any other extent that it is vague, overly broad,
21 burdensome, and/or seeks information that is neither material, necessary, or likely to lead to the
22 discovery of admissible evidence.

23 Responding Party objects to the request on the ground and to the extent that it may not
24 be possible to identify responsive documents based on the wording of the request.

25 Responding Party objects to the request to the extent that the time for which production
26 is demanded is unreasonably short, particularly when considered in combination with the
27 aforementioned over-breadth of the request and the inability to access information potentially
28 subject to the request.

1 Responding Party objects to the request to the extent it seeks confidential financial,
2 proprietary, business or personal information.

3 Responding Party objects to the request to the extent it impermissibly seeks to compel
4 through its phrasing the admission by Responding Party that any particular event occurred. To
5 the extent that Responding Party provides responses to the request such responses do not
6 constitute any such admission that any such particular event occurred.

7 Responding Party objects to the request to the extent it assumes facts that have not been
8 established, that are not true, or that are inaccurate.

9 Responding Party objects to the request to the extent it requires answers greater than,
10 beyond the requirements of, and/or at variance to applicable California law.

11 Responding Party objects to the request to the extent it does not adequately define the
12 terms used in them.

13 Responding Party objects to the request to the extent it seeks information that is not in
14 Responding Party's possession, custody or control.

15 Responding Party objects to the request to the extent it seeks to impose an obligation on
16 Responding Party to provide information for or on behalf of any person or entity other than
17 Responding Party.

18 Responding Party objects to the request to the extent that the discovery sought is
19 unreasonably cumulative or duplicative, or is obtainable from some other source that is more
20 convenient, less burdensome or less expensive.

21 The objections and responses herein are made without waiver of and with specific
22 preservation of all objections as to competency, relevancy, materiality, privilege, and
23 admissibility of the document or the subject matter thereof as evidence for any purpose and any
24 proceeding in this action (including trial) and in other actions.

25 **REQUEST FOR PRODUCTION OF DOCUMENTS NO. 2**

26 All communications between Six4Three, including without limitation Theodore Kramer,
27 Thomas Scaramellino, David Godkin, James Kruzer, Stuart Gross, and any other agent or
28 representative of Six4Three, and any third party individual or entity regarding Facebook's anti-

1 SLAPP motion, Six4Three's opposition to Facebook's anti-SLAPP motion, the Godkin
2 Declaration or exhibits thereto, or other Facebook confidential information. For the avoidance
3 of doubt, this includes but is not limited to media organizations and governmental entities,
4 including the Digital, Culture, Media and Sport Committee of the House of Commons ("DCMS
5 Committee").

6 **RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS NO. 2**

7 Responding Party objects to the request to the extent it seeks information that is
8 protected from disclosure by the attorney-client privilege, the work product doctrine, and any
9 other applicable privilege or doctrine protecting such information from disclosure.

10 Responding Party objects to the request on the ground that it is overbroad in that it
11 includes within its scope documents concerning the drafting and filing of the referenced court
12 filings and which have no relevance to the matters currently at issue, and therefore appear
13 requested with the purpose of harassing Responding Party and Mr. Godkin.

14 Responding Party objects to the request to any other extent that it is vague, overly broad,
15 burdensome, and/or seeks information that is neither material, necessary, or likely to lead to the
16 discovery of admissible evidence.

17 Responding Party objects to the request on the ground and to the extent that it may not
18 be possible to identify responsive documents based on the wording of the request.

19 Responding Party objects to the request to the extent that the time for which production
20 is demanded is unreasonably short, particularly when considered in combination with the
21 aforementioned over-breadth of the request and the inability to access information potentially
22 subject to the request.

23 Responding Party objects to the request to the extent it seeks confidential financial,
24 proprietary, business or personal information.

25 Responding Party objects to the request to the extent it impermissibly seeks to compel
26 through its phrasing the admission by Responding Party that any particular event occurred. To
27 the extent that Responding Party provides responses to the request such responses do not
28 constitute any such admission that any such particular event occurred.

1 Responding Party objects to the request to the extent it assumes facts that have not been
2 established, that are not true, or that are inaccurate.

3 Responding Party objects to the request to the extent it requires answers greater than,
4 beyond the requirements of, and/or at variance to applicable California law.

5 Responding Party objects to the request to the extent it does not adequately define the
6 terms used in them.

7 Responding Party objects to the request to the extent it seeks information that is not in
8 Responding Party's possession, custody or control.

9 Responding Party objects to the request to the extent it seeks to impose an obligation on
10 Responding Party to provide information for or on behalf of any person or entity other than
11 Responding Party.

12 Responding Party objects to the request to the extent that the discovery sought is
13 unreasonably cumulative or duplicative, or is obtainable from some other source that is more
14 convenient, less burdensome or less expensive.

15 The objections and responses herein are made without waiver of and with specific
16 preservation of all objections as to competency, relevancy, materiality, privilege, and
17 admissibility of the document or the subject matter thereof as evidence for any purpose and any
18 proceeding in this action (including trial) and in other actions.

19 **REQUEST FOR PRODUCTION OF DOCUMENTS NO. 3**

20 Documents sufficient to show the identity of all individuals or entities with whom
21 Theodore Kramer, Thomas Scaramellino, David Godkin, James Kruzer, and Stuart Gross, or
22 any other agent or representative of Six4Three, discussed Facebook's anti-SLAPP motion,
23 Six4Three's opposition to Facebook's anti-SLAPP motion, the Godkin Declaration or exhibits
24 thereto, or other Facebook confidential information.

25 **RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS NO. 3**

26 Responding Party objects to the request to the extent it seeks information that is
27 protected from disclosure by the attorney-client privilege, the work product doctrine, and any
28 other applicable privilege or doctrine protecting such information from disclosure.

1 Responding Party objects to the request on the ground that it is overbroad in that it
2 includes within its scope documents concerning the drafting and filing of the referenced court
3 filings and which have no relevance to the matters currently at issue, and therefore appear
4 requested with the purpose of harassing Responding Party and Mr. Godkin.

5 Responding Party objects to the request to any other extent that it is vague, overly broad,
6 burdensome, and/or seeks information that is neither material, necessary, or likely to lead to the
7 discovery of admissible evidence.

8 Responding Party objects to the request on the ground and to the extent that it may not
9 be possible to identify responsive documents based on the wording of the request.

10 Responding Party objects to the request to the extent that the time for which production
11 is demanded is unreasonably short, particularly when considered in combination with the
12 aforementioned over-breadth of the request and the inability to access information potentially
13 subject to the request.

14 Responding Party objects to the request to the extent it seeks confidential financial,
15 proprietary, business or personal information.

16 Responding Party objects to the request to the extent it impermissibly seeks to compel
17 through its phrasing the admission by Responding Party that any particular event occurred. To
18 the extent that Responding Party provides responses to the request such responses do not
19 constitute any such admission that any such particular event occurred.

20 Responding Party objects to the request to the extent it assumes facts that have not been
21 established, that are not true, or that are inaccurate.

22 Responding Party objects to the request to the extent it requires answers greater than,
23 beyond the requirements of, and/or at variance to applicable California law.

24 Responding Party objects to the request to the extent it does not adequately define the
25 terms used in them.

26 Responding Party objects to the request to the extent it seeks information that is not in
27 Responding Party's possession, custody or control.
28

1 Responding Party objects to the request to the extent it seeks to impose an obligation on
2 Responding Party to provide information for or on behalf of any person or entity other than
3 Responding Party.

4 Responding Party objects to the request to the extent that the discovery sought is
5 unreasonably cumulative or duplicative, or is obtainable from some other source that is more
6 convenient, less burdensome or less expensive.

7 The objections and responses herein are made without waiver of and with specific
8 preservation of all objections as to competency, relevancy, materiality, privilege, and
9 admissibility of the document or the subject matter thereof as evidence for any purpose and any
10 proceeding in this action (including trial) and in other actions.

11 **REQUEST FOR PRODUCTION OF DOCUMENTS NO. 4**

12 All emails and attachments exchanged between Mr. Kramer and Damian Collins.

13 **RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS NO. 4**

14 Responding Party objects to the request to the extent it seeks information that is
15 protected from disclosure by the attorney-client privilege, the work product doctrine, and any
16 other applicable privilege or doctrine protecting such information from disclosure.

17 Responding Party objects to the request on the ground that it is overbroad in that it
18 includes within its scope documents concerning the drafting and filing of the referenced court
19 filings and which have no relevance to the matters currently at issue, and therefore appear
20 requested with the purpose of harassing Responding Party and Mr. Godkin.

21 Responding Party objects to the request to any other extent that it is vague, overly broad,
22 burdensome, and/or seeks information that is neither material, necessary, or likely to lead to the
23 discovery of admissible evidence.

24 Responding Party objects to the request on the ground and to the extent that it may not
25 be possible to identify responsive documents based on the wording of the request.

26 Responding Party objects to the request to the extent that the time for which production
27 is demanded is unreasonably short, particularly when considered in combination with the
28

1 aforementioned over-breadth of the request and the inability to access information potentially
2 subject to the request.

3 Responding Party objects to the request to the extent it seeks confidential financial,
4 proprietary, business or personal information.

5 Responding Party objects to the request to the extent it impermissibly seeks to compel
6 through its phrasing the admission by Responding Party that any particular event occurred. To
7 the extent that Responding Party provides responses to the request such responses do not
8 constitute any such admission that any such particular event occurred.

9 Responding Party objects to the request to the extent it assumes facts that have not been
10 established, that are not true, or that are inaccurate.

11 Responding Party objects to the request to the extent it requires answers greater than,
12 beyond the requirements of, and/or at variance to applicable California law.

13 Responding Party objects to the request to the extent it does not adequately define the
14 terms used in them.

15 Responding Party objects to the request to the extent it seeks information that is not in
16 Responding Party's possession, custody or control.

17 Responding Party objects to the request to the extent it seeks to impose an obligation on
18 Responding Party to provide information for or on behalf of any person or entity other than
19 Responding Party.

20 Responding Party objects to the request to the extent that the discovery sought is
21 unreasonably cumulative or duplicative, or is obtainable from some other source that is more
22 convenient, less burdensome or less expensive.

23 The objections and responses herein are made without waiver of and with specific
24 preservation of all objections as to competency, relevancy, materiality, privilege, and
25 admissibility of the document or the subject matter thereof as evidence for any purpose and any
26 proceeding in this action (including trial) and in other actions.

1 **REQUEST FOR PRODUCTION OF DOCUMENTS NO. 5**

2 All logs or other records pertaining to the Six4Three Dropbox account that Mr. Kramer
3 accessed from his laptop, including all available or recoverable information about what
4 documents were uploaded to the account and by whom, what documents were downloaded from
5 the account and by whom, what documents were deleted from the account and by whom, when
6 the account was cached or synched locally and on what devices, and all individuals that had
7 access to the account and when.

8 **RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS NO. 5**

9 Responding Party objects to the request to the extent it seeks information that is
10 protected from disclosure by the attorney-client privilege, the work product doctrine, and any
11 other applicable privilege or doctrine protecting such information from disclosure.

12 Responding Party objects to the request on the ground that it is overbroad in that it
13 includes within its scope documents concerning the drafting and filing of the referenced court
14 filings and which have no relevance to the matters currently at issue, and therefore appear
15 requested with the purpose of harassing Responding Party and Mr. Godkin.

16 Responding Party objects to the request to any other extent that it is vague, overly broad,
17 burdensome, and/or seeks information that is neither material, necessary, or likely to lead to the
18 discovery of admissible evidence.

19 Responding Party objects to the request on the ground and to the extent that it may not
20 be possible to identify responsive documents based on the wording of the request.

21 Responding Party objects to the request to the extent that the time for which production
22 is demanded is unreasonably short, particularly when considered in combination with the
23 aforementioned over-breadth of the request and the inability to access information potentially
24 subject to the request.

25 Responding Party objects to the request to the extent it seeks confidential financial,
26 proprietary, business or personal information.

27 Responding Party objects to the request to the extent it impermissibly seeks to compel
28 through its phrasing the admission by Responding Party that any particular event occurred. To

1 the extent that Responding Party provides responses to the request such responses do not
2 constitute any such admission that any such particular event occurred.

3 Responding Party objects to the request to the extent it assumes facts that have not been
4 established, that are not true, or that are inaccurate.

5 Responding Party objects to the request to the extent it requires answers greater than,
6 beyond the requirements of, and/or at variance to applicable California law.

7 Responding Party objects to the request to the extent it does not adequately define the
8 terms used in them.

9 Responding Party objects to the request to the extent it seeks information that is not in
10 Responding Party's possession, custody or control.

11 Responding Party objects to the request to the extent it seeks to impose an obligation on
12 Responding Party to provide information for or on behalf of any person or entity other than
13 Responding Party.

14 Responding Party objects to the request to the extent that the discovery sought is
15 unreasonably cumulative or duplicative, or is obtainable from some other source that is more
16 convenient, less burdensome or less expensive.

17 The objections and responses herein are made without waiver of and with specific
18 preservation of all objections as to competency, relevancy, materiality, privilege, and
19 admissibility of the document or the subject matter thereof as evidence for any purpose and any
20 proceeding in this action (including trial) and in other actions.

21 **REQUEST FOR PRODUCTION OF DOCUMENTS NO. 6**

22 All emails or other communications amongst and between Mr. Gross or anyone at Gross
23 & Klein, Mr. Godkin or anyone at Birnbaum & Godkin, Mr. Kramer, Mr. Scaramellino or any
24 other agent, attorney, or individual associated with Six4Three from May 1, 2018 to the present
25 regarding Facebook's anti-SLAPP motion, Six4Three's opposition to Facebook's anti-SLAPP
26 motion, the Godkin Declaration or exhibits thereto, or other Facebook's confidential or highly
27 confidential information. For avoidance of doubt, this would include without limitation
28

1 communications relating to contacts with the DCMS Committee, *The Guardian*, *The Observer*,
2 or other third parties.

3 **RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS NO. 6**

4 Responding Party objects to the request to the extent it seeks information that is
5 protected from disclosure by the attorney-client privilege, the work product doctrine, and any
6 other applicable privilege or doctrine protecting such information from disclosure.

7 Responding Party objects to the request on the ground that it is overbroad in that it
8 includes within its scope documents concerning the drafting and filing of the referenced court
9 filings and which have no relevance to the matters currently at issue, and therefore appear
10 requested with the purpose of harassing Responding Party and Mr. Godkin.

11 Responding Party objects to the request to any other extent that it is vague, overly broad,
12 burdensome, and/or seeks information that is neither material, necessary, or likely to lead to the
13 discovery of admissible evidence.

14 Responding Party objects to the request on the ground and to the extent that it may not
15 be possible to identify responsive documents based on the wording of the request.

16 Responding Party objects to the request to the extent that the time for which production
17 is demanded is unreasonably short, particularly when considered in combination with the
18 aforementioned over-breadth of the request and the inability to access information potentially
19 subject to the request.

20 Responding Party objects to the request to the extent it seeks confidential financial,
21 proprietary, business or personal information.

22 Responding Party objects to the request to the extent it impermissibly seeks to compel
23 through its phrasing the admission by Responding Party that any particular event occurred. To
24 the extent that Responding Party provides responses to the request such responses do not
25 constitute any such admission that any such particular event occurred.

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27 established, that are not true, or that are inaccurate.

1 Responding Party objects to the request to the extent it requires answers greater than,
2 beyond the requirements of, and/or at variance to applicable California law.

3 Responding Party objects to the request to the extent it does not adequately define the
4 terms used in them.

5 Responding Party objects to the request to the extent it seeks information that is not in
6 Responding Party's possession, custody or control.

7 Responding Party objects to the request to the extent it seeks to impose an obligation on
8 Responding Party to provide information for or on behalf of any person or entity other than
9 Responding Party.

10 Responding Party objects to the request to the extent that the discovery sought is
11 unreasonably cumulative or duplicative or is obtainable from some other source that is more
12 convenient, less burdensome or less expensive.

13 The objections and responses herein are made without waiver of and with specific
14 preservation of all objections as to competency, relevancy, materiality, privilege, and
15 admissibility of the document or the subject matter thereof as evidence for any purpose and any
16 proceeding in this action (including trial) and in other actions.

17
18 Dated: December 3, 2018

Respectfully Submitted,

GROSS & KLEIN LLP

BIRNBAUM & GODKIN, LLP

21
22 By: 
Stuart G. Gross, Esq.

23 David S. Godkin (admitted *pro hac vice*)
James E. Kruzer (admitted *pro hac vice*)

24 Attorneys for Plaintiff Six4Three, LLC
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PROOF OF SERVICE

I, Cheryl A. McDuffee, declare:

I am a citizen of the United States and employed in Suffolk County, Massachusetts. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 280 Summer Street, Boston, MA 02210. On December 3, 2018, I served a copy of the within document(s):

OBJECTIONS AND RESPONSES TO FACEBOOK'S NOTICE OF DEPOSITION WITH REQUEST FOR THE PRODUCTION OF DOCUMENTS TO DAVID S. GODKIN



by electronic service, per the agreement of the parties, by emailing a true and correct copy through counsel's email address to Defendant's counsel of record at the email addresses set forth below.

Joshua H. Lerner (jlerner@durietangri.com)
Sonal N. Mehta (smehta@durietangri.com)
Laura Miller (lmiller@durietangri.com)
Catherine Kim (ckim@durietangri.com)
Durie Tangri (service-six4three@durietangri.com)
217 Leidesdorff Street
San Francisco, CA 94111
P (415) 376 - 6427
Attorney for Defendant
FACEBOOK, INC.

and

Judge V. Raymond Swope (By email and by hand)
Department 23
Complex Civil Litigation

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed December 3, 2018, at Boston, Massachusetts.


Cheryl A. McDuffee

EXHIBIT 42

1 Stuart G. Gross (#251019)
sgross@grosskleinlaw.com
2 GROSS & KLEIN LLP
The Embarcadero, Pier 9, Suite 100
3 San Francisco, CA 94111
(415) 671-4628

4 Of counsel:

5 David S. Godkin (admitted *pro hac vice*)
6 James E. Kruzer (admitted *pro hac vice*)
BIRNBAUM & GODKIN, LLP
7 280 Summer Street
Boston, MA 02210
8 (617) 307-6100
godkin@birnbaumgodkin.com
9 kruzer@birnbaumgodkin.com

10 Attorneys for Plaintiff,
11 SIX4THREE, LLC, a Delaware
limited liability company

12 SUPERIOR COURT OF CALIFORNIA

13 COUNTY OF SAN MATEO

14 SIX4THREE, LLC, a Delaware limited
15 liability company,

16 Plaintiff,

17 v.

18 FACEBOOK, INC., et al.,

19 Defendants.

) Case No. CIV 533328
)
)

) **Assigned for all purposes to Hon. V.**
) **Raymond Swope, Dept. 23**
)

) **OBJECTIONS AND RESPONSES TO**
) **FACEBOOK'S NOTICE OF**
) **DEPOSITION WITH REQUEST FOR**
) **THE PRODUCTION OF DOCUMENTS**
) **TO STUART GROSS**
)

20
21 **PROPOUNDING PARTY: FACEBOOK**

22 **RESPONDING PARTY:**

23 SIX4THREE, LLC

24 **SET NUMBER: ONE**
25
26
27
28

Responding Party has not fully completed its investigation of the facts relating to this matter. All the answers contained herein are based upon such information and documents which are presently available and specifically known to Responding Party and disclose only those contentions which presently occur to such Responding Party. It is anticipated that further discovery, independent investigation, legal research and analysis will supply additional facts, add meaning to the known facts, as well as establish entirely new factual conclusions and legal contentions, all of which may lead to substantial additions, changes in and variations from the contentions herein set forth. The following responses to the notice of deposition and requests for production of documents are given without prejudice to Responding Party's right to produce evidence of any subsequently discovered fact or facts which Responding Party may later recall. Responding Party accordingly reserves the right to change any and all answers herein as additional facts are ascertained, analyses are made, legal research is completed and contentions are made.

The answers contained herein are made in a good faith effort to supply as much factual information and as much specification of legal contentions as is presently known but should in no way be in prejudice of Responding Party in relation to further discovery, research and analysis.

I. RESPONSES TO NOTICE OF DEPOSITION

Responding Party objects to the notice of deposition of Mr. Gross on the ground that Mr. Gross is a member of Responding Party's legal team, and Defendants have not met their burden to show his deposition is required, notwithstanding the very strong presumption against the deposition of the attorneys of an opposing party. Responding party further objects to the notice of deposition of Mr. Gross on the ground that the date and time noticed for Mr. Gross's deposition provides for an unreasonably short time for Mr. Gross to engage counsel to represent him, if he so chooses, or prepare for his deposition, and is otherwise unduly inconvenient for Mr. Gross and counsel and was chosen without prior consultation with counsel.

II. RESPONSES TO REQUESTS FOR PRODUCTION OF DOCUMENTS

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 1

Documents (e.g., phone logs) sufficient to show all telephonic and/or video conference communications between Six4Three, including without limitation Theodore Kramer, Thomas Scaramellino, David Godkin, James Kruzer, Stuart Gross, and any other agent or representative of Six4Three, and any individual or entity regarding Facebook's anti-SLAPP motion, Six4Three's opposition to Facebook's anti-SLAPP motion, the Godkin Declaration in support of Six4Three's opposition to Facebook's anti-SLAPP motion ("Godkin Declaration") or exhibits thereto, or other Facebook confidential information. For avoidance of doubt, this includes but is not limited to media organizations and governmental entities, including the Digital, Culture, Media and Sport Committee of the House of Commons ("DCMS Committee").

RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS NO. 1

Responding Party objects to the request to the extent it seeks information that is protected from disclosure by the attorney-client privilege, the work product doctrine, and any other applicable privilege or doctrine protecting such information from disclosure.

Responding Party objects to the request on the ground that it is overbroad in that it includes within its scope documents concerning the drafting and filing of the referenced court filings and which have no relevance to the matters currently at issue, and therefore appear requested with the purpose of harassing Responding Party and Mr. Gross.

Responding Party objects to the request to any other extent that it is vague, overly broad, burdensome, and/or seeks information that is neither material, necessary, or likely to lead to the discovery of admissible evidence.

Responding Party objects to the request on the ground and to the extent that it may not be possible to identify responsive documents based on the wording of the request.

Responding Party objects to the request to the extent that the time for which production is demanded is unreasonably short, particularly when considered in combination with the aforementioned over-breadth of the request and the inability to access information potentially subject to the request.

Responding Party objects to the request to the extent it seeks confidential financial, proprietary, business or personal information.

1 Responding Party objects to the request to the extent it impermissibly seeks to compel
2 through its phrasing the admission by Responding Party that any particular event occurred. To the
3 extent that Responding Party provides responses to the request such responses do not constitute
4 any such admission that any such particular event occurred.

5 Responding Party objects to the request to the extent it assumes facts that have not been
6 established, that are not true, or that are inaccurate.

7 Responding Party objects to the request to the extent it requires answers greater than,
8 beyond the requirements of, and/or at variance to applicable California law.

9 Responding Party objects to the request to the extent it does not adequately define the
10 terms used in them.

11 Responding Party objects to the request to the extent it seeks information that is not in
12 Responding Party's possession, custody or control.

13 Responding Party objects to the request to the extent it seeks to impose an obligation on
14 Responding Party to provide information for or on behalf of any person or entity other than
15 Responding Party.

16 Responding Party objects to the request to the extent that the discovery sought is
17 unreasonably cumulative or duplicative, or is obtainable from some other source that is more
18 convenient, less burdensome or less expensive.

19 The objections and responses herein are made without waiver of and with specific
20 preservation of all objections as to competency, relevancy, materiality, privilege, and admissibility
21 of the document or the subject matter thereof as evidence for any purpose and any proceeding in
22 this action (including trial) and in other actions.

23
24 **REQUEST FOR PRODUCTION OF DOCUMENTS NO. 2**

25 All communications between Six4Three, including without limitation Theodore Kramer,
26 Thomas Scaramellino, David Godkin, James Kruzer, Stuart Gross, and any other agent or
27 representative of Six4Three, and any third party individual or entity regarding Facebook's anti-
28 SLAPP motion, Six4Three's opposition to Facebook's anti-SLAPP motion, the Godkin

1 Declaration or exhibits thereto, or other Facebook confidential information. For the avoidance of
2 doubt, this includes but is not limited to media organizations and governmental entities, including
3 the Digital, Culture, Media and Sport Committee of the House of Commons ("DCMS
4 Committee").

5 **RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS NO. 2**

6 Responding Party objects to the request to the extent it seeks information that is protected
7 from disclosure by the attorney-client privilege, the work product doctrine, and any other
8 applicable privilege or doctrine protecting such information from disclosure.

9 Responding Party objects to the request on the ground that it is overbroad in that it includes
10 within its scope documents concerning the drafting and filing of the referenced court filings and
11 which have no relevance to the matters currently at issue, and therefore appear requested with the
12 purpose of harassing Responding Party and Mr. Gross.

13 Responding Party objects to the request to any other extent that it is vague, overly broad,
14 burdensome, and/or seeks information that is neither material, necessary, or likely to lead to the
15 discovery of admissible evidence.

16 Responding Party objects to the request on the ground and to the extent that it may not be
17 possible to identify responsive documents based on the wording of the request.

18 Responding Party objects to the request to the extent that the time for which production is
19 demanded is unreasonably short, particularly when considered in combination with the
20 aforementioned over-breadth of the request and the inability to access information potentially
21 subject to the request.

22 Responding Party objects to the request to the extent it seeks confidential financial,
23 proprietary, business or personal information.

24 Responding Party objects to the request to the extent it impermissibly seeks to compel
25 through its phrasing the admission by Responding Party that any particular event occurred. To the
26 extent that Responding Party provides responses to the request such responses do not constitute
27 any such admission that any such particular event occurred.

28 Responding Party objects to the request to the extent it assumes facts that have not been

1 established, that are not true, or that are inaccurate.

2 Responding Party objects to the request to the extent it requires answers greater than,
3 beyond the requirements of, and/or at variance to applicable California law.

4 Responding Party objects to the request to the extent it does not adequately define the
5 terms used in them.

6 Responding Party objects to the request to the extent it seeks information that is not in
7 Responding Party's possession, custody or control.

8 Responding Party objects to the request to the extent it seeks to impose an obligation on
9 Responding Party to provide information for or on behalf of any person or entity other than
10 Responding Party.

11 Responding Party objects to the request to the extent that the discovery sought is
12 unreasonably cumulative or duplicative, or is obtainable from some other source that is more
13 convenient, less burdensome or less expensive.

14 The objections and responses herein are made without waiver of and with specific
15 preservation of all objections as to competency, relevancy, materiality, privilege, and admissibility
16 of the document or the subject matter thereof as evidence for any purpose and any proceeding in
17 this action (including trial) and in other actions.

18 **REQUEST FOR PRODUCTION OF DOCUMENTS NO. 3**

19 Documents sufficient to show the identity of all individuals or entities with whom
20 Theodore Kramer, Thomas Scaramellino, David Godkin, James Kruzer, and Stuart Gross, or any
21 other agent or representative of Six4Three, discussed Facebook's anti-SLAPP motion,
22 Six4Three's opposition to Facebook's anti-SLAPP motion, the Godkin Declaration or exhibits
23 thereto, or other Facebook confidential information.

24 **RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS NO. 3**

25 Responding Party objects to the request to the extent it seeks information that is protected
26 from disclosure by the attorney-client privilege, the work product doctrine, and any other
27 applicable privilege or doctrine protecting such information from disclosure.

28 Responding Party objects to the request on the ground that it is overbroad in that it includes

1 within its scope documents concerning the drafting and filing of the referenced court filings and
2 which have no relevance to the matters currently at issue, and therefore appear requested with the
3 purpose of harassing Responding Party and Mr. Gross.

4 Responding Party objects to the request to any other extent that it is vague, overly broad,
5 burdensome, and/or seeks information that is neither material, necessary, or likely to lead to the
6 discovery of admissible evidence.

7 Responding Party objects to the request on the ground and to the extent that it may not be
8 possible to identify responsive documents based on the wording of the request.

9 Responding Party objects to the request to the extent that the time for which production is
10 demanded is unreasonably short, particularly when considered in combination with the
11 aforementioned over-breadth of the request and the inability to access information potentially
12 subject to the request.

13 Responding Party objects to the request to the extent it seeks confidential financial,
14 proprietary, business or personal information.

15 Responding Party objects to the request to the extent it impermissibly seeks to compel
16 through its phrasing the admission by Responding Party that any particular event occurred. To the
17 extent that Responding Party provides responses to the request such responses do not constitute
18 any such admission that any such particular event occurred.

19 Responding Party objects to the request to the extent it assumes facts that have not been
20 established, that are not true, or that are inaccurate.

21 Responding Party objects to the request to the extent it requires answers greater than,
22 beyond the requirements of, and/or at variance to applicable California law.

23 Responding Party objects to the request to the extent it does not adequately define the
24 terms used in them.

25 Responding Party objects to the request to the extent it seeks information that is not in
26 Responding Party's possession, custody or control.

27 Responding Party objects to the request to the extent it seeks to impose an obligation on
28 Responding Party to provide information for or on behalf of any person or entity other than

1 Responding Party.

2 Responding Party objects to the request to the extent that the discovery sought is
3 unreasonably cumulative or duplicative, or is obtainable from some other source that is more
4 convenient, less burdensome or less expensive.

5 The objections and responses herein are made without waiver of and with specific
6 preservation of all objections as to competency, relevancy, materiality, privilege, and admissibility
7 of the document or the subject matter thereof as evidence for any purpose and any proceeding in
8 this action (including trial) and in other actions.

9 **REQUEST FOR PRODUCTION OF DOCUMENTS NO. 4**

10 All emails and attachments exchanged between Mr. Kramer and Damian Collins.

11 **RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS NO. 4**

12 Responding Party objects to the request to the extent it seeks information that is protected
13 from disclosure by the attorney-client privilege, the work product doctrine, and any other
14 applicable privilege or doctrine protecting such information from disclosure.

15 Responding Party objects to the request on the ground that it is overbroad in that it includes
16 within its scope documents concerning the drafting and filing of the referenced court filings and
17 which have no relevance to the matters currently at issue, and therefore appear requested with the
18 purpose of harassing Responding Party and Mr. Gross.

19 Responding Party objects to the request to any other extent that it is vague, overly broad,
20 burdensome, and/or seeks information that is neither material, necessary, or likely to lead to the
21 discovery of admissible evidence.

22 Responding Party objects to the request on the ground and to the extent that it may not be
23 possible to identify responsive documents based on the wording of the request.

24 Responding Party objects to the request to the extent that the time for which production is
25 demanded is unreasonably short, particularly when considered in combination with the
26 aforementioned over-breadth of the request and the inability to access information potentially
27 subject to the request.

28 Responding Party objects to the request to the extent it seeks confidential financial,

1 proprietary, business or personal information.

2 Responding Party objects to the request to the extent it impermissibly seeks to compel
3 through its phrasing the admission by Responding Party that any particular event occurred. To the
4 extent that Responding Party provides responses to the request such responses do not constitute
5 any such admission that any such particular event occurred.

6 Responding Party objects to the request to the extent it assumes facts that have not been
7 established, that are not true, or that are inaccurate.

8 Responding Party objects to the request to the extent it requires answers greater than,
9 beyond the requirements of, and/or at variance to applicable California law.

10 Responding Party objects to the request to the extent it does not adequately define the
11 terms used in them.

12 Responding Party objects to the request to the extent it seeks information that is not in
13 Responding Party's possession, custody or control.

14 Responding Party objects to the request to the extent it seeks to impose an obligation on
15 Responding Party to provide information for or on behalf of any person or entity other than
16 Responding Party.

17 Responding Party objects to the request to the extent that the discovery sought is
18 unreasonably cumulative or duplicative, or is obtainable from some other source that is more
19 convenient, less burdensome or less expensive.

20 The objections and responses herein are made without waiver of and with specific
21 preservation of all objections as to competency, relevancy, materiality, privilege, and admissibility
22 of the document or the subject matter thereof as evidence for any purpose and any proceeding in
23 this action (including trial) and in other actions.

24 **REQUEST FOR PRODUCTION OF DOCUMENTS NO. 5**

25 All logs or other records pertaining to the Six4Three Dropbox account that Mr. Kramer
26 accessed from his laptop, including all available or recoverable information about what
27 documents were uploaded to the account and by whom, what documents were downloaded from
28 the account and by whom, what documents were deleted from the account and by whom, when

1 the account was cached or synched locally and on what devices, and all individuals that had
2 access to the account and when.

3 **RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS NO. 5**

4 Responding Party objects to the request to the extent it seeks information that is protected
5 from disclosure by the attorney-client privilege, the work product doctrine, and any other
6 applicable privilege or doctrine protecting such information from disclosure.

7 Responding Party objects to the request on the ground that it is overbroad in that it includes
8 within its scope documents concerning the drafting and filing of the referenced court filings and
9 which have no relevance to the matters currently at issue, and therefore appear requested with the
10 purpose of harassing Responding Party and Mr. Gross.

11 Responding Party objects to the request to any other extent that it is vague, overly broad,
12 burdensome, and/or seeks information that is neither material, necessary, or likely to lead to the
13 discovery of admissible evidence.

14 Responding Party objects to the request on the ground and to the extent that it may not be
15 possible to identify responsive documents based on the wording of the request.

16 Responding Party objects to the request to the extent that the time for which production is
17 demanded is unreasonably short, particularly when considered in combination with the
18 aforementioned over-breadth of the request and the inability to access information potentially
19 subject to the request.

20 Responding Party objects to the request to the extent it seeks confidential financial,
21 proprietary, business or personal information.

22 Responding Party objects to the request to the extent it impermissibly seeks to compel
23 through its phrasing the admission by Responding Party that any particular event occurred. To the
24 extent that Responding Party provides responses to the request such responses do not constitute
25 any such admission that any such particular event occurred.

26 Responding Party objects to the request to the extent it assumes facts that have not been
27 established, that are not true, or that are inaccurate.

28 Responding Party objects to the request to the extent it requires answers greater than,

beyond the requirements of, and/or at variance to applicable California law.

Responding Party objects to the request to the extent it does not adequately define the terms used in them.

Responding Party objects to the request to the extent it seeks information that is not in Responding Party's possession, custody or control.

Responding Party objects to the request to the extent it seeks to impose an obligation on Responding Party to provide information for or on behalf of any person or entity other than Responding Party.

Responding Party objects to the request to the extent that the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome or less expensive.

The objections and responses herein are made without waiver of and with specific preservation of all objections as to competency, relevancy, materiality, privilege, and admissibility of the document or the subject matter thereof as evidence for any purpose and any proceeding in this action (including trial) and in other actions.

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 6

All emails or other communications amongst and between Mr. Gross or anyone at Gross & Klein, Mr. Godkin or anyone at Birnbaum & Godkin, Mr. Kramer, Mr. Scaramellino or any other agent, attorney, or individual associated with Six4Three from May 1, 2018 to the present regarding Facebook's anti-SLAPP motion, Six4Three's opposition to Facebook's anti-SLAPP motion, the Godkin Declaration or exhibits thereto, or other Facebook's confidential or highly confidential information. For avoidance of doubt, this would include without limitation communications relating to contacts with the DCMS Committee, *The Guardian*, *The Observer*, or other third parties.

RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS NO. 6

Responding Party objects to the request to the extent it seeks information that is protected from disclosure by the attorney-client privilege, the work product doctrine, and any other applicable privilege or doctrine protecting such information from disclosure.

1 Responding Party objects to the request on the ground that it is overbroad in that it includes
2 within its scope documents concerning the drafting and filing of the referenced court filings and
3 which have no relevance to the matters currently at issue, and therefore appear requested with the
4 purpose of harassing Responding Party and Mr. Gross.

5 Responding Party objects to the request to any other extent that it is vague, overly broad,
6 burdensome, and/or seeks information that is neither material, necessary, or likely to lead to the
7 discovery of admissible evidence.

8 Responding Party objects to the request on the ground and to the extent that it may not be
9 possible to identify responsive documents based on the wording of the request.

10 Responding Party objects to the request to the extent that the time for which production is
11 demanded is unreasonably short, particularly when considered in combination with the
12 aforementioned over-breadth of the request and the inability to access information potentially
13 subject to the request.

14 Responding Party objects to the request to the extent it seeks confidential financial,
15 proprietary, business or personal information.

16 Responding Party objects to the request to the extent it impermissibly seeks to compel
17 through its phrasing the admission by Responding Party that any particular event occurred. To the
18 extent that Responding Party provides responses to the request such responses do not constitute
19 any such admission that any such particular event occurred.

20 Responding Party objects to the request to the extent it assumes facts that have not been
21 established, that are not true, or that are inaccurate.

22 Responding Party objects to the request to the extent it requires answers greater than,
23 beyond the requirements of, and/or at variance to applicable California law.

24 Responding Party objects to the request to the extent it does not adequately define the
25 terms used in them.

26 Responding Party objects to the request to the extent it seeks information that is not in
27 Responding Party's possession, custody or control.

28 Responding Party objects to the request to the extent it seeks to impose an obligation on

1 Responding Party to provide information for or on behalf of any person or entity other than
2 Responding Party.

3 Responding Party objects to the request to the extent that the discovery sought is
4 unreasonably cumulative or duplicative, or is obtainable from some other source that is more
5 convenient, less burdensome or less expensive.

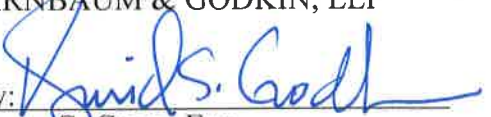
6 The objections and responses herein are made without waiver of and with specific
7 preservation of all objections as to competency, relevancy, materiality, privilege, and admissibility
8 of the document or the subject matter thereof as evidence for any purpose and any proceeding in
9 this action (including trial) and in other actions.

10
11
12 Dated: December 3, 2018

Respectfully Submitted,

GROSS & KLEIN LLP

BIRNBAUM & GODKIN, LLP

13
14
15
16 By: 
Stuart G. Gross, Esq.
David S. Godkin (admitted *pro hac vice*)
James E. Kruzer (admitted *pro hac vice*)
Attorneys for Plaintiff Six4Three, LLC

PROOF OF SERVICE

I, Cheryl A. McDuffee, declare:

I am a citizen of the United States and employed in Suffolk County, Massachusetts. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 280 Summer Street, Boston, MA 02210. On December 3, 2018, I served a copy of the within document(s):

OBJECTIONS AND RESPONSES TO FACEBOOK'S NOTICE OF DEPOSITION WITH REQUEST FOR THE PRODUCTION OF DOCUMENTS TO STUART GROSS



by electronic service, per the agreement of the parties, by emailing a true and correct copy through counsel's email address to Defendant's counsel of record at the email addresses set forth below.

Joshua H. Lerner (jlerner@durietangri.com)
Sonal N. Mehta (smehta@durietangri.com)
Laura Miller (lmiller@durietangri.com)
Catherine Kim (ckim@durietangri.com)
Durie Tangri (service-six4three@durietangri.com)
217 Leidesdorff Street
San Francisco, CA 94111
P (415) 376 - 6427
Attorney for Defendant
FACEBOOK, INC.

and

Judge V. Raymond Swope (By email and by hand)
Department 23
Complex Civil Litigation

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed December 3, 2018, at Boston, Massachusetts.


Cheryl A. McDuffee

EXHIBIT 43

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN MATEO

SIX4THREE, LLC, A DELAWARE LIMITED)	
LIABILITY COMPANY, et al.,)	Case No.
)	CIV533328
Plaintiffs,)	
)	
vs.)	
)	CERTIFIED
FACEBOOK, INCORPORATED, et al.,)	TRANSCRIPT
)	
Defendants.)	
)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS

BEFORE THE HONORABLE V. RAYMOND SWOPE, JUDGE

DEPARTMENT 23

--oOo--

DECEMBER 17, 2018

--oOo--

A P P E A R A N C E S:

For the Plaintiffs: Birnbaum & Godkin
280 Summer Street
Boston, Massachusetts 02210

By: DAVID GODKIN, Esq.

Gross & Klein
The Embarcadero, Suite 100
San Francisco, California 94111

By: STUART G. GROSS, Esq.

(Appearances continued on next page:)

Reported by: Megan Zalmi, CSR 10925, CRR

1 MS. MEHTA: Good morning, Your Honor.

2 Sonal Mehta, Josh Lerner, Laura Miller, Catherine Kim,
3 and Zachary Abrahamson from Durie Tangri for Facebook.
4 And also here are Paul Grewawal, vice-president, deputy
5 general counsel for litigation from Facebook, and
6 Natalie Nagle, associate general counsel for litigation
7 at Facebook.

8 THE COURT: Good morning. I am going to have
9 to make a disclosure. I don't think it's really that
10 necessary, but I am going to do it, nevertheless.

11 I used to work for Mr. Sullivan's firm nearly
12 30 years ago at Wilson, Elser, Moskowitz, Edelman &
13 Dicker in San Francisco. I also used to work with
14 Mr. Lassart at Ropers, Majeski, Kohn & Bentley over 20
15 years ago. Any connections or affiliations are long
16 past, and I hope that the parties will appreciate the
17 disclosure.

18 And if there's no objection, we'll go forward.

19 All right. I just mentioned that in an
20 abundance of caution.

21 This court has taken considerable time without
22 the pressure of a briefing schedule and has looked at
23 this over the weekend. And the court has reflected on
24 the matters that have occurred in the recent weeks with
25 regard to the violation of the court order and the
26 subsequent release by the House of Commons and so forth.

1 And the court has, therefore, reconsidered certain
2 orders it has previously issued with regard to the
3 matters that are pressing. Therefore, in particular,
4 the order reopening discovery for the limited purpose of
5 investigating the breach of the court orders is vacated.

6 The reason for this is that I agree with
7 Mr. Russo and, essentially, the inferences raised by
8 Facebook, that there may be sufficient information to
9 serve as a basis for a motion for terminating sanctions
10 and for an application for order to show cause re:
11 Contempt that's been issued by the parties.

12 Accordingly, the court is ordering the
13 following: The forensic examiner should preserve and
14 maintain the custody of the data collected pursuant to
15 the court order.

16 The court orders preservation of that data,
17 and nothing shall be disclosed to any of the parties
18 until further order of the Court.

19 The forensic examiner shall not run any search
20 terms at all, unless necessary for the preservation of
21 the data, and such preservation, or necessity, shall
22 only be pursuant to a court order.

23 Second, the court will not appoint a
24 third-party discovery referee, nor will the court
25 appoint a discovery referee for depositions.

26 The court further orders that there shall be

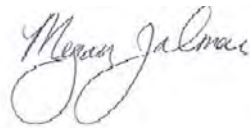
REPORTER'S CERTIFICATE

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN MATEO)

I, Megan Zalmal, Certified Shorthand
Reporter No. 10925, do hereby certify:

That on December 17, 2018, in the County of
San Mateo, State of California, I took in stenotype a
true and correct report of the oral proceedings had in
the case of Six4Three versus Facebook, CIV533328, and
that the foregoing pages, 1-62, are a true and accurate
transcription of my stenotype notes, taken as aforesaid,
and is a whole transcription thereof.

DATED: Redwood City, California, December 23, 2018.



MEGAN ZALMAI, CSR NO. 10925

EXHIBIT 44

CIV533328
CMO
Case Management Order
1535210



FILED
SAN MATEO COUNTY

DEC 07 2018

[Signature]
Clerk of the Superior Court
By *[Signature]*
DEPUTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO

SIX4THREE LLC,

Plaintiff,

vs.

FACEBOOK, INC., et al.

Defendants.

Case No. CIV533328

**CASE MANAGEMENT ORDER NO. 17
RE: (1) AMENDMENT OF NOVEMBER
30, 2018 ORDER; (2) FACEBOOK, INC'S
EX PARTE APPLICATION FILED
DECEMBER 5, 2018; AND
(3) DISCOVERY CONFERENCE**

Assigned for All Purposes to
Hon. V. Raymond Swope, Dept. 23

Hearing Date: Friday, December 7, 2018
Hearing Time: 9:00 a.m.
Dept.: 23

Action Filed: April 10, 2015

On November 30, 2018, the Court heard matters set forth in the Order for Briefing And Staying Submission of Unredacted Copies of Sealed Documents, issued November 20, 2018, ("11/20 Order") and Order and Notice of Hearing Concerning Matters Subject to This Court's Sealing and Protective Orders and Order Issued November 20, 2018, issued November 27, 2018 ("11/27 Order"). The Court issued its order orally on the record and then issued a written order, Order Denying Defendant Facebook, Inc.'s Ex Parte Application on November 30, 2018, ("11/30 Order"). However, the 11/30 Order did not entirely memorialize the Court's oral orders on the record.

On December 5, 2018, the Court issued an Order and Notice of Hearing no. 2 setting the briefing schedule and hearing on Defendant Facebook, Inc.'s ("Defendant" or "Facebook") Ex Parte Application ("Ex Parte").

1 IT IS HEREBY ORDERED as follows:

2 **1. Memorialization of Oral Orders Issued on the Record on November 30, 2018**

3 To the extent not reflected in the 11/30 Order, the Court amends that order as follows:

4 a. The Court re-opens discovery for the limited purpose of Plaintiff, Plaintiff's counsel
5 David Godkin, Stuart Gross and law clerk Thomas Scaramellino, and Plaintiff principal Theodore
6 Kramer's disclosure, dissemination, distribution and/or destruction, or attempt thereto, of Defendant
7 Facebook, Inc.'s confidential and highly confidential documents and violation of the Court's orders,
8 including but not limited to letters and declarations proffered on behalf of Plaintiff Six4Three LLC
9 ("Plaintiff" or "Six4Three"), Mr. Kramer or Mr. Scaramellino, while the action is stayed pending
10 the cross-appeals on Facebook and the individual defendants' anti-SLAPP motions. Merits based
11 discovery remains stayed. (See Hearing Tr., dated Nov. 30, 2018, p. 11:1-4 ("Hearing Tr.").)

12 b. The Court will consider ex parte applications for order shortening time on discovery
13 motions. (Hearing Tr., p. 61:20 – 62:7.)

14 c. The Court expects both Plaintiff, including Mr. Kramer, and Plaintiff's counsel to
15 cooperate with the expedited discovery. (Hearing Tr., p. 68:12-13.)

16 d. Defendant's Motion for Anti-SLAPP Attorney Fees is continued from December 7,
17 2018 to January 11, 2019 at 9 a.m. (Hearing Tr., p. 68:14-18.)

18 e. A Discovery Conference is set for December 7, 2018 at 9 a.m. (Hearing Tr., p. 68:2
19 – 69:5.)

20 **2. Defendant Facebook, Inc.'s Ex Parte Application**

21 Defendant's Ex Parte is GRANTED.

22 a. Mr. Thomas Scaramellino, to be accompanied by Plaintiffs' counsel David Godkin
23 and Stuart Gross and his and Mr. Kramer's individual counsel Jack Russo, shall appear before third
24 party forensic examiner Eric Friedberg of Stroz Friedberg, or his agents, ("Forensic Examiner") at
25 Stroz Friedberg, 101 Montgomery Street, Suite 2200, San Francisco, California, **on December 7,**
26 **2018 at 3 p.m. PST or earlier date and time agreed by the Forensic Examiner and the parties**
27 ("Examination"). Pursuant to the stipulation of Mr. Scaramellino (Kramer and Scaramellino Opp.
28 to Ex Parte, filed Dec. 12, 2018, p. 3:7, 3:12-14 ("Individual Opp")), at the supervision and direction

1 of the Forensic Examiner, Mr. Scaramellino shall reset the passwords for all of his and/or
2 Six4Three's Dropbox accounts, including but not limited to the five user names he provided to the
3 Forensic Examiner on December 1, 2018 and any other accounts not previously disclosed, by
4 initiating a password reset. Mr. Scaramellino shall follow Dropbox's password reset procedures to
5 gain access to these accounts. This includes any necessary multifactor authentication credentials
6 required to access these accounts. Mr. Scaramellino shall bring any devices or login credentials
7 required to access these accounts by multifactor authentication credentials to the Examination. The
8 Forensic Examiner shall set new Dropbox passwords for these accounts, maintain chain of custody,
9 take all measures to restrict access to, and preserve the data in these Dropbox accounts, including
10 but not limited to imaging, for preservation of the evidence until further order of the Court.
11 Defendant's counsel are permitted to be present for the Examination. No other person, party, or
12 counsel shall reset the login credentials to gain access to these accounts until further order of the
13 Court.

14 b. **Mr. Kramer shall also appear at the Examination.** Mr. Scaramellino and Mr.
15 Kramer, as administrator of Six4Three's Dropbox account(s), shall take all steps possible, under the
16 Forensic Examiner's supervision and direction, to recover the deleted Dropbox account(s), including
17 but not limited to, requesting reactivation of the account and requesting any and all available records
18 or logs of the account(s) from Dropbox. This includes any necessary multifactor authentication
19 credentials required to access these accounts. Mr. Kramer and Mr. Scaramellino shall bring any
20 devices or login credentials required to access these accounts by multifactor authentication
21 credentials to the Examination. The Forensic Examiner shall supervise and provide Mr. Kramer and
22 Mr. Scaramellino with access to laptops or computers in his custody if necessary for multifactor
23 authentication and maintain chain of custody. Once recovered, the Forensic Examiner shall set a
24 new Dropbox password for this account, maintain chain of custody, take all measures to restrict
25 access to, and preserve the data in this Dropbox account, including but not limited to imaging, for
26 preservation of the evidence until further order of the Court. No other person, party, or counsel shall
27 reset the login credentials to gain access to this account until further order of the Court.

28 ///

1 c. The Court clarifies the 11/30 Order regarding storage or back-up devices for laptops
2 and/or, respectively, mobile devices. This order includes and encompasses any physical formats,
3 including but not limited to USB thumb drives, DVDs, external hard drives or servers ("physical
4 storage devices") and any services or storage in the cloud for any Internet or app-based service
5 accessed by laptop and/or mobile device, including but not limited to videoconferencing (e.g.
6 Google Hangouts), messaging platforms (e.g. Whatsapp?) email platforms (e.g. Gmail), file or
7 document management (e.g. Google Drive) or document editing platforms (e.g. Google Docs)
8 ("cloud storage"). The enumerated lists in the 11/30 Order and the instant order are not to be
9 considered limiting.

10 d. At the Examination, Mr. Scaramellino shall identify, in writing, all physical storage
11 devices and cloud storage, not previously provided to the Forensic Examiner, and Mr. Scaramellino
12 shall make and any log-in information necessary for the full and complete access to all data in his
13 cloud storage, including but not limited to his Gmail account, thomas.scaramellino@gmail.com, and
14 all associated cloud services, including Google Drive. This includes any necessary multifactor
15 authentication credentials required to access these accounts. Mr. Scaramellino shall bring any
16 devices or login credentials required to access these accounts by multifactor authentication
17 credentials to the Examination. The Forensic Examiner shall supervise and provide Mr. Kramer with
18 access to his laptop or computer in his custody if necessary for multifactor authentication and
19 maintain chain of custody. The Forensic Examiner shall promptly take all measures to preserve the
20 data in Mr. Scaramellino's cloud storage, including but not limited to imaging, for preservation of
21 the evidence until further order of the Court. Mr. Scaramellino shall not open, access, modify, or
22 delete any cloud storage until the Forensic Examiner's written notification to all parties and counsel
23 of record of the completion of the preservation of evidence of Mr. Scaramellino's cloud storage.
24 After notification, Mr. Scaramellino may then continue to use the cloud storage, but shall not delete
25 any data from the cloud storage until further order of the Court. If the Forensic Examiner requires
26 continued access to Mr. Scaramellino's cloud storage for the preservation of evidence, Mr.
27 Scaramellino is expected to cooperate in providing such access. The Forensic Examiner shall report
28 to the court and cc: all parties or their counsel of record should any disputes or objections be raised.

1 e. At the Examination, Mr. Kramer shall identify, in writing, all physical storage
2 devices and cloud storage, not previously provided to the Forensic Examiner, and Mr. Scaramellino ^{Kramer} shall make and any log-in information necessary for the full and complete access to all data in his
3 cloud storage, including but not limited to his Gmail account, theodore.kramer@gmail.com, and all
4 associated cloud services, including Google Drive. This includes any necessary multifactor
5 authentication credentials required to access these accounts. Mr. Kramer shall bring any devices or
6 login credentials required to access these accounts by multifactor authentication credentials to the
7 Examination. The Forensic Examiner shall supervise and provide Mr. Kramer with access to his
8 laptop or computer in his custody if necessary for multifactor authentication and maintain chain of
9 custody. The Forensic Examiner shall promptly take all measures to preserve the data in Mr.
10 Kramer's cloud storage, including but not limited to imaging, for preservation of the evidence until
11 further order of the Court. Mr. Kramer shall not open, access, modify, or delete any cloud storage
12 until the Forensic Examiner's written notification to all parties and counsel of record of the
13 completion of the preservation of evidence of Mr. Kramer's cloud storage. After notification, Mr.
14 Kramer may then continue to use the cloud storage, but shall not delete any data from the cloud
15 storage until further order of the Court. If the Forensic Examiner requires continued access to Mr.
16 Kramer's cloud storage for the preservation of evidence, Mr. Kramer is expected to cooperate in
17 providing such access. The Forensic Examiner shall report to the court and cc: all parties or their
18 counsel of record should any disputes or objections be raised

19
20 f. If Mr. Scaramellino or Mr. Kramer have identified any physical storage devices not
21 previously provided to the Forensic Examiner, they shall make the physical storage devices
22 available for pick up by the Forensic Examiner at the Examination. The Forensic Examiner shall
23 pick up, maintain chain of custody, take all measures to restrict access to, and preserve the data on
24 the physical storage devices, including but not limited to imaging, for preservation of the evidence
25 until further order of the Court.

26 g. Good cause appears for these measures to preserve evidence given the findings
27 enumerated in the 11/30 Order in addition to the evidence proffered by Plaintiff, Plaintiff's counsel,
28 Mr. Kramer. Mr. Scaramellino and Defendant. The Court orders that the Forensic Examiner shall

1 continue to not disclose any data preserved or collected in this action to any party, non-party, person
2 or entity, until further order of the Court.

3 **3. Discovery Conference**

4 On December 5, 2018, the Court received a redacted version and unredacted version of
5 Defendant's discovery letter brief. It is the Court's understanding the unredacted version includes
6 confidential settlement discussions, which is improper. The Court has only read and reviewed the
7 redacted version and not the unredacted version. Defendant's counsel Durie Tangri, LLP is
8 admonished for including confidential settlement discussions to the Court.

9 The Court sets a further discovery conference **Monday, December 17, 2018 at 9 a.m.** in
10 Department 23, limited to: (1) the selection of a third party independent forensic examiner to, *inter*
11 *alia*, run search terms on all preserved data; and (2) the selection of deposition referee to attend the
12 depositions related to this inquiry. Costs of the forensic examiner and deposition referee shall be
13 shared equally by Six4Three and Facebook. Prior to that date, the parties shall meet and confer in
14 order to stipulate to the selection. If the parties stipulate to the selection, the parties shall submit a
15 stipulation and proposed order. If the parties are unable to stipulate, Plaintiff and Defendant shall
16 propose three names and resumes for the selection of a forensic examiner and a deposition referee
17 to the Court along with their discovery letter briefs to be file and electronically served **no later than**
18 **Friday, December 14, 2018 at 12 p.m.** Personal appearances are required by all counsel of record.
19 Mr. Kramer and Mr. Scaramellino's appearances are not presently ordered by the Court. No
20 telephonic appearances are permitted.

21
22 IT IS SO ORDERED.

23
24 DATED: December 7, 2018


25
26 
27 Honorable V. Raymond Swope
28 Judge of the Superior Court

EXHIBIT 45

1 Stuart G. Gross (#251019)
sgross@grosskleinlaw.com
2 Benjamin H. Klein (#313922)
3 bklein@grosskleinlaw.com
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5 (415) 671-4628

6 Of counsel:

7 David S. Godkin (admitted *pro hac vice*)
8 James E. Kruzer (admitted *pro hac vice*)
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9 280 Summer Street
Boston, MA 02210
10 (617) 307-6100
godkin@birnbaumgodkin.com
11 kruzer@birnbaumgodkin.com

12 Attorneys for Plaintiff,
13 SIX4THREE, LLC, a Delaware
14 limited liability company

15
16 SUPERIOR COURT OF CALIFORNIA

17 COUNTY OF SAN MATEO

18
19 SIX4THREE, LLC, a Delaware limited
liability company,

20 Plaintiff,

21 v.

22 FACEBOOK, INC., et al.,

23 Defendants.

) Case No. CIV 533328

)

) **Assigned for all purposes to Hon. V.**
21 **Raymond Swope, Dept. 23**

)

) **DECLARATION OF THEODORE**
22 **KRAMER IN IN SUPPORT OF**
23 **PLAINTIFF'S BRIEF IN RESPONSE**
24 **TO NOVEMBER 20, 2018 ORDER**

)

) Department: 23

25 Judge: Honorable V. Raymond Swope

26 Filing Date: April 10, 2015

27 Trial Date: April 25, 2019

1 I, Theodore Kramer, declare:

2 1. I am the founder and Managing Director of Six4Three, LLC (“643”). I make this
3 Declaration from personal knowledge, and if called to testify, I could and would competently
4 testify thereto.

5 2. While Six4Three was operating and since the collapse of its business as a result
6 of the events that gave rise to this suit, I have held multiple positions at other companies and
7 have pursued business ventures unrelated to Six4Three. Such business requires that I
8 periodically travel to London.

9 3. On May 21, 2018, I met with Carole Cadwalladr, a reporter for *The Guardian*, in
10 London while there on business and shared with her the public allegations in the case. She
11 asked me frequently during this meeting if I could share documents with her and where they
12 were located. Each time she requested this information, I informed her that confidential
13 documents were subject to a Protective Order in California Superior Court, that they were
14 stored on a file server in the cloud, and that confidential documents could not be released
15 without either an Order from the Court or Facebook’s consent.

16 4. On August 28, 2018, I again met with Ms. Cadwalladr, this time in California.
17 She informed me that she would like to raise our case with Damian Collins MP, the Chairman
18 of a Parliamentary Committee in the United Kingdom investigating Facebook’s management of
19 third party access to user data. I informed Ms. Cadwalladr that I would be willing to speak with
20 Mr. Collins.

21 5. On October 1, 2018, I emailed Mr. Collins a summary of the public allegations
22 and public filings in the case. Attached hereto as **Exhibit 1** is a true and correct copy of the
23 letter I sent Mr. Collins on October 1, 2018.

24 6. On November 3, 2018, Mr. Collins responded to my October 1 email, indicating
25 that he had received from Ms. Cadwalladr information regarding certain categories of
26 documents related to the case. Attached hereto as **Exhibit 2** is a true and correct copy of the
27 letter Mr. Collins sent me on November 3, 2018.

1 7. On November 4, 2018, I responded to Mr. Collins, notifying him that the
2 documents were subject to a Protective Order in San Mateo Superior Court and that if he were
3 to order me to produce the documents, I would be required to notify Facebook. Attached hereto
4 as **Exhibit 3** is a true and correct copy of the letter I sent Mr. Collins on November 4, 2018.

5 8. On November 6, 2018, Chloe Challender, the clerk of the Digital, Culture, Media
6 and Sport Committee of the House of Commons of the United Kingdom Parliament (“DCMS”)
7 emailed me a letter asking that I provide the documents Mr. Collins had requested. I ignored
8 Ms. Challender’s email. She followed up on November 8, 2018, asking me to confirm receipt of
9 the letter. On November 12, 2018, I responded to Ms. Challender by email with confirmation
10 that I received the letter and that, as I had communicated to Mr. Collins previously, I could not
11 comply with her request that I disclose the materials as they are subject to the Protective Order.
12 Attached hereto as **Exhibit 4** is a true and correct copy of the email exchange between me and
13 Ms. Challender, including the letter attached to Ms. Challender’s email of November 6, 2018.

14 9. On November 13, 2018, Mr. Collins again emailed me asking if he could publish
15 the public allegations and public filings and further seeking any other unrestricted documents. I
16 did not respond to Mr. Collins. Attached hereto as **Exhibit 5** is a true and correct copy of the
17 email Mr. Collins sent me on November 13, 2018.

18 10. On November 17, 2018, Ms. Cadwalladr called me. I informed her that I had a
19 business trip to London, and she suggested we meet for her to receive another update on the
20 case. I agreed to meet with her at my hotel and sent her a calendar invitation. Ms. Cadwalladr is
21 the only person I told the name of my hotel while in London. Attached hereto as **Exhibit 6** is a
22 true and correct copy of the calendar invitation I sent Ms. Cadwalladr on November 17, 2018
23 for our meeting on November 19, 2018.

24 11. On November 19, 2018, I arrived in London to attend business meetings on
25 behalf of my company. Upon arriving in London on November 19, 2018, I received an email
26 from DCMS, which attached an Order to Produce Documents (“DCMS Order #1”), requesting
27 my compliance no later than 5pm local time on November 20, 2018. I immediately forwarded
28 the email and attached DCMS Order #1 to counsel. I then checked into my hotel, the London

1 Marriott Hotel County Hall located at London County Hall, Westminster Bridge Road, South
2 Bank, London SE1 7PB, United Kingdom ("London Marriott"). Shortly after checking in, I
3 received and reviewed an email from counsel's administrative assistant, attaching letters
4 counsel had sent to Mr. Collins and Defendants' counsel, which I also received and reviewed. I
5 understood that I was not permitted to comply with DCMS Order #1 and, more generally, that I
6 was not permitted to provide any documents designated confidential or highly confidential by
7 Defendants to DCMS or any other person. When I awoke on November 20, 2018, I had been
8 served a hard copy of DCMS Order #1 to my hotel room. I do not know how DCMS discovered
9 the location of my hotel and hotel room. Attached hereto as **Exhibit 7** is a true and correct copy
10 of the DCMS Order #1 I received from DCMS via email on November 19, 2018 and via service
11 to my hotel room the morning of November 20, 2018.

12 12. I refused to comply with DCMS Order #1 and proceeded to conduct my business
13 in London. On November 20, 2018, I received and reviewed an email from counsel's
14 administrative assistant, attaching a letter counsel had sent to Mr. Collins, which I also received
15 and reviewed. I continued to understand that I was not permitted to comply with DCMS Order
16 #1 and, more generally, that I was not permitted to provide any documents designated
17 confidential or highly confidential by Defendants to DCMS or any other person. For the
18 remainder of November 20, 2018, I engaged in pre-planned meetings and other work unrelated
19 to Six4Three. On November 20, 2018, I also received from Plaintiff's counsel this Court's
20 Order dated November 20, 2018, as well as Plaintiff's counsel's letter to Mr. Collins, which
21 attached the Order. I understood that the November 20, 2018 Order, as well as the Protective
22 Order, continued to bar me from providing any documents designated confidential or highly
23 confidential by Defendants to DCMS or any other person.

24 13. On November 21, 2018, following a breakfast business meeting, I returned to the
25 London Marriott at 9am local time, at which point the Serjeant-at-Arms of the House of
26 Commons followed me into the lobby. The Serjeant-at-Arms served me with another Order to
27 Produce Documents ("DCMS Order #2"). I immediately took a picture of DCMS Order #2 and
28

1 emailed it to counsel. Attached hereto as **Exhibit 8** is a true and correct copy of DCMS Order
2 #2.

3 14. I again refused to comply with DCMS Order #2 and proceeded to conduct my
4 business in London. At 11am local time on November 21, 2018, I received via email from
5 DCMS a third Order to Produce Documents (“DCMS Order #3”), which now indicated that
6 DCMS had formally reported my non-compliance to the House of Commons, which “will
7 appear on today’s formal record, and the process of investigation will commence.” Attached
8 hereto as **Exhibit 9** is a true and correct copy of DCMS Order #3.

9 15. In light of DCMS’ continued pressure and my inability to conduct business
10 peacefully, I concluded on my own that I needed to address this matter with Mr. Collins directly
11 and further determine what DCMS intended when it wrote that “the process of investigation will
12 commence.” I did not feel comfortable continuing my scheduled meetings while under an active
13 investigation by Parliament. I believed it was highly likely that if I continued to ignore DCMS,
14 the Serjeant-at-Arms or other Parliamentary staff may have placed me under contempt or
15 sanction during one of my business meetings, which would have greatly tarnished my
16 reputation, placed me in significant legal jeopardy in the United Kingdom, and made it
17 impossible for me to conduct business in the United Kingdom in the future. I was also
18 concerned that I might be barred from leaving the country and/or returning to the country if the
19 matter was not resolved. I also attempted to research the issue on Google and concluded that
20 any decision to ignore an active investigation by a national government could result in serious,
21 potentially criminal, consequences. However, I did not seek further advice from counsel at this
22 time, including the attorneys representing Six4Three.

23 16. Thus, I attempted to delay my next meeting and went to Parliament at
24 approximately 12:30pm local time and asked Parliamentary staff to contact Mr. Collins to
25 advise him I was outside and prepared to discuss his investigation into me. Prior to doing this, I
26 did not seek further advice from an attorney, including the attorneys representing Six4Three. I
27 did not at that time indicate a willingness to comply with the DCMS Orders, and I did not
28 intend to comply with the DCMS Orders. I continued to understand that I was not allowed to

1 comply with the Orders in light of the Protective Order and the November 20th Order. I intended
2 to understand fully the procedures, risks and penalties associated with Parliament's notice to me
3 that they had begun an active investigation into me. I intended to convince Mr. Collins that he
4 could not force me to turn over documents subject to the Protective Order, and further that he
5 could not prevent me from conducting business in the United Kingdom.

6 17. Parliamentary staff then brought me into Mr. Collins' office, where he and his
7 staff kept me for two hours, explaining in significant detail the procedures of the investigation
8 and the penalties associated with my continued non-compliance. I asked Mr. Collins if he could
9 resolve this matter directly with Facebook and if he had received any response from Facebook
10 or its counsel. Mr. Collins responded: "No. Nothing at all."

11 18. Mr. Collins and his staff then communicated to me that I was in contempt, under
12 an active investigation, and that the penalty could include fines and potential imprisonment. I
13 did not know whether I was free to leave the location, or if I had been allowed to leave, if I
14 would be permitted to fly home to the United States. At this point, I panicked. I opened my
15 computer, took out a USB drive, and went onto the local dropbox folder synced to my
16 computer. I searched the folder using keywords relevant to Mr. Collins' request and looked for
17 filenames that appeared to be related to the anti-SLAPP opposition papers that Mr. Collins had
18 ordered me to produce. I did not expect to find the precise documents Mr. Collins had
19 requested, and I had not previously seen or accessed folders that appeared in my search. Mr.
20 Collins had two staff members present with him, one of whom was directly viewing my screen.
21 I identified a relevant folder where it appeared summaries and reviews of materials were kept. I
22 identified a small number of files by filename and transferred them to the USB drive. Mr.
23 Collins watched me as I did this, and I turned the USB drive over to him immediately. I do not
24 recall the exact files I transferred, but I was looking for any files I could access relevant to the
25 anti-SLAPP opposition papers, since that was the subject of the DCMS Orders. I did not open
26 any of the files.

27 19. I have not reviewed any highly confidential documents produced by Facebook. I
28 did not access folders containing highly confidential documents at any time except by

1 instruction of Mr. Collins in his office on November 21, 2018. My decision to provide these
2 documents to Mr. Collins was contrary to the explicit statements by counsel contained in the
3 various communications referenced above.

4 20. At approximately 1pm local time on November 21, 2018, I received an email
5 from counsel containing legal advice. I did not receive this email until after I left Parliament
6 that afternoon. I did not have cellular service inside Parliament. I was so shaken by this
7 experience that I failed to attend my remaining meetings without notifying my appointments. I
8 headed straight to the airport. I did not contact counsel or any member of the legal team to
9 inform them that I had provided the documents to DCMS.

10 21. On the morning of November 22, 2018, I received a letter from DCMS
11 confirming my compliance with its Orders and stating that DCMS had no further plans to
12 proceed with its investigation or to continue its contempt proceeding. I did not provide this
13 letter to counsel or any other member of the legal team until the afternoon of November 23,
14 2018. Attached hereto as **Exhibit 10** is a true and correct copy of this letter from DCMS
15 confirming my compliance.

16 22. I spent November 22, 2018 with my family in New York for the Thanksgiving
17 holiday.

18 23. On November 23, 2018, I spent the morning compiling all of the relevant
19 information and materials regarding the sequence of events pertaining to my trip to London.
20 That afternoon, I sent this information and materials to counsel, notifying counsel of my
21 compliance with the DCMS Orders.

22 24. On November 23, 2018, counsel instructed me to delete from my computer and
23 dropbox account any documents that could contain information designated highly confidential
24 by Defendants. I complied with this request of counsel, and in doing so, did not open or review
25 any such documents. I confirmed my compliance that same day.

26 25. I have not retained counsel in the United Kingdom.

27 26. I affirm that any factual assertions contained herein are supported by competent
28 evidence to the extent such evidence exists.

1
2 I declare under the penalty of perjury under the laws of the State of California that the
3 foregoing is true and correct.

4 Executed November 26, 2018 at Rye, New York.

5
6 

7 Theodore Kramer

EXHIBIT 1



Theodore Kramer <theodore.kramer@gmail.com>

Extensive evidence relevant to Facebook's data and privacy abuses

Theodore Kramer <theodore.kramer@gmail.com>

Mon, Oct 1, 2018 at 2:47 PM

To: damian.collins.mp@parliament.uk

Damian,

I've been following your leadership in the House of Commons Culture, Media and Sport Select Committee over the past year and have been extremely impressed with your passion for finding the truth with regards to Brexit, Cambridge Analytica, and Facebook's involvement in all of the above.

My company has been in litigation with Facebook and Mark Zuckerberg for three years and has obtained extensive discovery of communications between Zuckerberg and numerous other Facebook executives and employees regarding Facebook's treatment of user data and third party developers from 2007 to 2015.

Just recently, Carole Cadwalladr of The Guardian published two articles related to our case and what we have uncovered during discovery since we filed suit.

<https://www.theguardian.com/technology/2018/may/24/mark-zuckerberg-set-up-fraudulent-scheme-weaponise-data-facebook-court-case-alleges>

https://www.theguardian.com/technology/2018/may/24/facebook-accused-of-conducting-mass-surveillance-through-its-apps?CMP=share_btn_tw

I believe the information we have uncovered demonstrates clearly that Facebook violated the privacy of US citizens and its prior settlement with the FTC.

I have attempted to summarize the public information from our case below. I have also attached a summary of public information regarding the conduct and our most recent opposition filed in California State Superior Court.

Finally, I have attached a document that should assist you and your committee as you approach Facebook for documentation and evidence related to the company's handling of user data since January 1st, 2012. Carole recommended we send it to you.

I would really like to take the opportunity to talk to you about our case. Would you and your staff be open to a phone call?

Regards,

Ted Kramer

--

We believe the evidence obtained in our ongoing litigation demonstrates that Zuckerberg architected a fraudulent scheme in mid-2012 in discussions with Chris Cox, Javier Olivan, Sheryl Sandberg, Dan Rose and Sam Lessin, among others. The purpose of the scheme was to weaponize friend data in order to unfairly boost Facebook's transition from desktop to mobile advertising and to wipe out competition in messaging, contact, photo, video and other consumer software markets. The scheme entailed Facebook entirely ignoring its policies and privacy settings on user data (particularly friend data) for organizations that provided revenues or other financial benefit to Facebook in order to boost its user growth and mobile ad sales. We allege the scheme was communicated to senior Platform employees in October and November 2012, at which time they had planned a public announcement to remove friend data, but Zuckerberg directed them not to do so. Instead, from 2012 on, Zuckerberg used friend data maliciously as a stick to force companies to buy mobile ads to save Facebook's advertising business, which was not prepared for the transition from desktop computers to mobile phones. In other words, Zuckerberg tied the unrelated data and advertising products together in a malicious way. For companies who paid up in mobile ads, Zuckerberg didn't care what they did with the friend data. For companies who wouldn't pay for mobile ads or that Zuckerberg considered too competitive, Zuckerberg shut off their access to friend data even though Facebook made it available to all developers at the time. We have uncovered numerous instances of Facebook recognizing a policy violation related to user data and deciding not to enforce it in order to avoid interruption of purchases in its nascent mobile app install ads product.


Further, throughout this period from 2012 to 2015, Facebook never provided third party developers with any privacy settings when it passed user data. In other words, if Facebook knew that a user had set a photo for only "friends" to see, it refused to pass that information along to the third party developer notwithstanding that employees reported this "bug" for years. Thus, it was not even possible for Professor Kogan and Cambridge Analytica to determine how one of the quiz app's users wanted their data treated. That doesn't negate the wrongful conduct of Cambridge Analytica and others, but it does demonstrate that Facebook was the initially culpable actor here, not a third party. Facebook also deliberately took no further measures from 2012 to 2014 in order to make privacy controls around friend data more transparent and ubiquitous. This was not an accident. This was done deliberately to enable Zuckerberg to weaponize the friend data to boost partners who paid Facebook extraordinary sums in mobile advertisements that saved Facebook's advertising business in late 2012 and 2013. Facebook would not have the business it has today if Zuckerberg had not deliberately created the environment that Cambridge Analytica exploited. In sum, the Cambridge Analytica abuse was only possible because Zuckerberg became very desperate in mid/late 2012 to save his advertising business, which was collapsing due to the fact that people began using smartphones instead of computers.

Zuckerberg's scheme to arbitrarily enforce policies and friend data access based on mobile ad payments was concealed from most Facebook employees until very late 2013. Zuckerberg had begun working on a false privacy narrative for the scheme as early as 2012 and began testing it with employees in early 2013. The scheme was announced as Graph API 2.0 on April 30, 2014 with an entirely false privacy narrative (that the executives who implemented it self-consciously recognized as false) and which hid Facebook's decision to put a wall around its Platform behind the announcement of an unrelated project revamping Facebook's Login product. Interestingly, Facebook's original announcement removing friend data in April 2014 noted only that "several rarely used endpoints" were being removed. Internal emails show that these endpoints, including friend data, were the most widely used in Platform, contradicting Facebook's public claims. The fact that these endpoints were widely used appears obvious now in light of the fact that Cambridge Analytica used them to access data for 50 million consumers. Thus, Facebook's 2015 statement that the endpoints were "rarely used" is at best intentionally misleading.

Finally, we have alleged that Facebook engaged in almost a dozen projects after the FTC Order in which Facebook misled users regarding how their data was treated, ranging from commingling Onavo data with Facebook data prior to any update to the Onavo terms of service to the decision to track the texts and call logs of Android users without sign off from the privacy and legal departments at Facebook (and without updating the Facebook Android permissions) to deliberately ignoring privacy settings for a popular Facebook feature to Zuckerberg's repeated requests that when a user sets the privacy on a piece of data to "only me" that Facebook must make that setting "unsticky" to encourage users to share their data more broadly than they feel comfortable doing.

3 attachments

 **Summary of Complaint.pdf**
234K

 **FILED Corrected Opp to Individual Defendants Anti-SLAPP.pdf**
2423K

 **Requests for Production_six4three.pdf**
94K

EXHIBIT 2



Theodore Kramer <theodore.kramer@gmail.com>

Extensive evidence relevant to Facebook's data and privacy abuses

COLLINS, Damian <damian.collins.mp@parliament.uk>

Sat, Nov 3, 2018 at 3:28 PM

To: Theodore Kramer <theodore.kramer@gmail.com>

Cc: Damian Collins <damiannct@googlemail.com>

Dear Ted

Thank you so much for getting in touch about this. I have spoke with Carole about this and would really like to do anything I can to help on this very important issue.

Carole has suggested I write to you with the following request [see below] – can I just check with you directly that this is correct

I have also copied in here my private gmail and my UK mobile phone number is +447775947158

We are planning an international meeting of the select committee on 27th November and this could provide the perfect opportunity to explore the issues that you have been involved with

Best wishes

Damian

I write concerning documents in your possession related to the matter of Six4Three, LLC v. Facebook, Inc., filed on April 10, 2015 in California Superior Court, County of San Mateo (CIV533328). The following categories of documents have been deemed highly relevant to ongoing Committee investigations:

Unredacted copy of Plaintiff Six4Three's Corrected Memorandum of Points and Authorities in Opposition to Defendants' Special Motions to Strike (Anti-SLAPP) filed on May 18, 2018;

Unredacted copy of the Declaration of David S. Godkin in Support of Six4Three's Anti-SLAPP Opposition ("Godkin Anti-SLAPP Declaration") filed concurrently therewith on May 18, 2018;

Exhibits 1-212 to the Godkin Anti-SLAPP Declaration filed on May 18, 2018;

All documents containing summaries or analyses of any of the exhibits to the Godkin Anti-SLAPP Declaration filed on May 18, 2018.

Damian Collins

MP for Folkestone and Hythe

Chair of the Digital, Culture, Media and Sport Select Committee

T 020 7219 7072

www.damiancollins.com

From: Theodore Kramer <theodore.kramer@gmail.com>

Date: Monday, 1 October 2018 at 19:47

To: Damian Collins <damian.collins.mp@parliament.uk>

Subject: Extensive evidence relevant to Facebook's data and privacy abuses

Damian,

[Quoted text hidden]

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EXHIBIT 3



Theodore Kramer <theodore.kramer@gmail.com>

Extensive evidence relevant to Facebook's data and privacy abuses

Theodore Kramer <theodore.kramer@gmail.com>

Sun, Nov 4, 2018 at 6:29 PM

To: damian.collins.mp@parliament.uk

Cc: damianntc@googlemail.com

Dear Mr. Collins,

Thanks for your note. I can confirm that your description of the documents in my possession is accurate. These documents are subject to confidentiality under a protective order entered in San Mateo Superior Court in California. Carole mentioned you may be seeking to subpoena the documents. I will agree to accept service of a subpoena mailed to my home address: 1267 Chestnut St., Apt 6, San Francisco, California 94109.

Upon receipt of any subpoena, I would be required to notify Facebook. If Facebook wishes to prevent my compliance, it will need to take action in appropriate fora.

If you wish to speak, it is best we setup a phone call with a conference line. We always have a member of our legal team on the line to ensure we have witnesses of what was discussed in the event Facebook takes retributive action against us.

My personal view is that the documents you list in your note contain information highly relevant to your investigation regarding Facebook's data practices, and further that it would be impossible for the investigation to reach any legitimate conclusions without a thorough review of this information.

Regards,

Ted

On Sat, Nov 3, 2018 at 12:28 PM COLLINS, Damian <damian.collins.mp@parliament.uk> wrote:

Dear Ted

Thank you so much for getting in touch about this. I have spoke with Carole about this and would really like to do anything I can to help on this very important issue.

Carole has suggested I write to you with the following request [see below] – can I just check with you directly that this is correct

I have also copied in here my private gmail and my UK mobile phone number is +447775947158

We are planning an international meeting of the select committee on 27th November and this could provide the perfect opportunity to explore the issues that you have been involved with

Best wishes

Damian

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Unredacted copy of Plaintiff Six4Three's Corrected Memorandum of Points and Authorities in Opposition to Defendants' Special Motions to Strike (Anti-SLAPP) filed on May 18, 2018;

Unredacted copy of the Declaration of David S. Godkin in Support of Six4Three's Anti-SLAPP Opposition ("Godkin Anti-SLAPP Declaration") filed concurrently therewith on May 18, 2018;

Exhibits 1-212 to the Godkin Anti-SLAPP Declaration filed on May 18, 2018;

All documents containing summaries or analyses of any of the exhibits to the Godkin Anti-SLAPP Declaration filed on May 18, 2018.

Damian Collins

MP for Folkestone and Hythe

Chair of the Digital, Culture, Media and Sport Select Committee

T 020 7219 7072

www.damiancollins.com

From: Theodore Kramer <theodore.kramer@gmail.com>

Date: Monday, 1 October 2018 at 19:47

To: Damian Collins <damian.collins.mp@parliament.uk>

Subject: Extensive evidence relevant to Facebook's data and privacy abuses

Damian,

I've been following your leadership in the House of Commons Culture, Media and Sport Select Committee over the past year and have been extremely impressed with your passion for finding the truth with regards to Brexit, Cambridge Analytica, and Facebook's involvement in all of the above.

My company has been in litigation with Facebook and Mark Zuckerberg for three years and has obtained extensive discovery of communications between Zuckerberg and numerous other Facebook executives and employees regarding Facebook's treatment of user data and third party developers from 2007 to 2015.

Just recently, Carole Cadwalladr of The Guardian published two articles related to our case and what we have uncovered during discovery since we filed suit.

<https://www.theguardian.com/technology/2018/may/24/mark-zuckerberg-set-up-fraudulent-scheme-weaponise-data-facebook-court-case-alleges>

https://www.theguardian.com/technology/2018/may/24/facebook-accused-of-conducting-mass-surveillance-through-its-apps?CMP=share_btn_tw

I believe the information we have uncovered demonstrates clearly that Facebook violated the privacy of US citizens and its prior settlement with the FTC.

I have attempted to summarize the public information from our case below. I have also attached a summary of public information regarding the conduct and our most recent opposition filed in California State Superior Court.

Finally, I have attached a document that should assist you and your committee as you approach Facebook for documentation and evidence related to the company's handling of user data since January 1st, 2012. Carole recommended we send it to you.

I would really like to take the opportunity to talk to you about our case. Would you and your staff be open to a phone call?

Regards,

Ted Kramer

--

We believe the evidence obtained in our ongoing litigation demonstrates that Zuckerberg architected a fraudulent scheme in mid-2012 in discussions with Chris Cox, Javier Oliván, Sheryl Sandberg, Dan Rose and Sam Lessin, among others. The purpose of the scheme was to weaponize friend data in order to unfairly boost Facebook's transition from desktop to mobile advertising and to wipe out competition in messaging, contact, photo, video and other consumer software markets. The scheme entailed Facebook entirely ignoring its policies and privacy settings on user data (particularly friend data) for organizations that provided revenues or other financial benefit to Facebook in order to boost its user growth and mobile ad sales. We allege the scheme was communicated to senior Platform employees in October and November 2012, at which time they had planned a public announcement to remove friend data, but Zuckerberg directed them not to do so. Instead, from 2012 on, Zuckerberg used friend data maliciously as a stick to force companies to buy mobile ads to save Facebook's advertising business, which was not prepared for the transition from desktop computers to mobile phones. In other words, Zuckerberg tied the unrelated data and advertising products together in a malicious way. For companies who paid up in

mobile ads, Zuckerberg didn't care what they did with the friend data. For companies who wouldn't pay for mobile ads or that Zuckerberg considered too competitive, Zuckerberg shut off their access to friend data even though Facebook made it available to all developers at the time. We have uncovered numerous instances of Facebook recognizing a policy violation related to user data and deciding not to enforce it in order to avoid interruption of purchases in its nascent mobile app install ads product.

Further, throughout this period from 2012 to 2015, Facebook never provided third party developers with any privacy settings when it passed user data. In other words, if Facebook knew that a user had set a photo for only "friends" to see, it refused to pass that information along to the third party developer notwithstanding that employees reported this "bug" for years. Thus, it was not even possible for Professor Kogan and Cambridge Analytica to determine how one of the quiz app's users wanted their data treated. That doesn't negate the wrongful conduct of Cambridge Analytica and others, but it does demonstrate that Facebook was the initially culpable actor here, not a third party. Facebook also deliberately took no further measures from 2012 to 2014 in order to make privacy controls around friend data more transparent and ubiquitous. This was not an accident. This was done deliberately to enable Zuckerberg to weaponize the friend data to boost partners who paid Facebook extraordinary sums in mobile advertisements that saved Facebook's advertising business in late 2012 and 2013. Facebook would not have the business it has today if Zuckerberg had not deliberately created the environment that Cambridge Analytica exploited. In sum, the Cambridge Analytica abuse was only possible because Zuckerberg became very desperate in mid/late 2012 to save his advertising business, which was collapsing due to the fact that people began using smartphones instead of computers.

Zuckerberg's scheme to arbitrarily enforce policies and friend data access based on mobile ad payments was concealed from most Facebook employees until very late 2013. Zuckerberg had begun working on a false privacy narrative for the scheme as early as 2012 and began testing it with employees in early 2013. The scheme was announced as Graph API 2.0 on April 30, 2014 with an entirely false privacy narrative (that the executives who implemented it self-consciously recognized as false) and which hid Facebook's decision to put a wall around its Platform behind the announcement of an unrelated project revamping Facebook's Login product. Interestingly, Facebook's original announcement removing friend data in April 2014 noted only that "several rarely used endpoints" were being removed. Internal emails show that these endpoints, including friend data, were the most widely used in Platform, contradicting Facebook's public claims. The fact that these endpoints were widely used appears obvious now in light of the fact that Cambridge Analytica used them to access data for 50 million consumers. Thus, Facebook's 2015 statement that the endpoints were "rarely used" is at best intentionally misleading.

Finally, we have alleged that Facebook engaged in almost a dozen projects after the FTC Order in which Facebook misled users regarding how their data was treated, ranging from commingling Onavo data with Facebook data prior to any update to the Onavo terms of service to the decision to track the texts and call logs of Android users without sign off from the privacy and legal departments at Facebook (and without updating the Facebook Android permissions) to deliberately ignoring privacy settings for a popular Facebook feature to Zuckerberg's repeated requests that when a user sets the privacy on a piece of data to "only me" that Facebook must make that setting "unsticky" to encourage users to share their data more broadly than they feel comfortable doing.

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EXHIBIT 4



Theodore Kramer <theodore.kramer@gmail.com>

FW: Letter from DCMS Committee

Theodore Kramer <theodore.kramer@gmail.com>
To: "CHALLENGER, Chloe" <CHALLENGERC@parliament.uk>

Mon, Nov 12, 2018 at 6:40 PM

Ms. Challenger,

I received your letter. I can not comply with your request that I voluntarily disclose the materials you have requested as they are subject to a protective order in California Superior Court.

Regards, Ted

On Thu, Nov 8, 2018 at 11:50 PM CHALLENGER, Chloe <CHALLENGERC@parliament.uk> wrote:

Dear Mr Kramer

I just wanted to check that you had received my email?

Thanks
Chloe



Chloe Challenger

Clerk | Digital, Culture, Media and Sport Committee | House of Commons | London SW1A 0AA

Tel: 020 7219 6120 | E-mail: challenderc@parliament.uk

www.parliament.uk/cms | [@CommonsCMS](#)

From: CHALLENGER, Chloe
Sent: 06 November 2018 16:54
To: 'theodore.kramer@gmail.com' <theodore.kramer@gmail.com>
Cc: WILLOWS, Josephine <Willowsj@parliament.uk>; Culture, Media & Sport Committee <CMSCOM@parliament.uk>
Subject: FW: Letter from DCMS Committee

Dear Mr Kramer

If I may introduce myself, I am Clerk of the Digital, Culture, Media and Sport Committee here in the UK House of Commons.

I am writing on behalf of the Chair, Damian Collins MP. I understand that Mr Collins has been in touch with you about documents in your possession that may be helpful to our Fake News inquiry.

Mr Collins has edited the early draft of the letter that you may have seen; the new version is attached. We plan to send this to you in the post tomorrow. Damian wished to say that we are happy to publish the letter if this would be of assistance. Please let me know what you think?

Best wishes,

Chloe



Chloe Challenger

Clerk | Digital, Culture, Media and Sport Committee | House of Commons | London SW1A 0AA

Tel: 020 7219 6120 | E-mail: challenderc@parliament.uk

www.parliament.uk/cms | [@CommonsCMS](https://twitter.com/CommonsCMS)

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Digital, Culture, Media and Sport Committee

House of Commons, London SW1A 0AA

Tel 020 7219 6120 Email cmscom@parliament.uk Website www.parliament.uk/cms

Mr Theodore Kramer
1267 Chestnut St.,
Apt 6, San Francisco,
California 94109
USA

6 November 2018

Dear Mr Kramer

The UK House of Commons Digital, Culture, Media and Sport Committee, of which I am Chair, would like to request several documents that we believe to be in your possession. They relate to the matter of Six4Three, LLC v. Facebook, Inc., filed on April 10, 2015 in California Superior Court, County of San Mateo (CIV533328). The following categories of documents have been deemed highly relevant to ongoing Committee investigations:

- Unredacted copy of Plaintiff Six4Three's Corrected Memorandum of Points and Authorities in Opposition to Defendants' Special Motions to Strike (Anti-SLAPP) filed on May 18, 2018;
- Unredacted copy of the Declaration of David S. Godkin in Support of Six4Three's Anti-SLAPP Opposition ("Godkin Anti-SLAPP Declaration") filed concurrently therewith on May 18, 2018;
- Exhibits 1-212 to the Godkin Anti-SLAPP Declaration filed on May 18, 2018;
- All documents containing summaries or analyses of any of the exhibits to the Godkin Anti-SLAPP Declaration filed on May 18, 2018.

I should highlight that, if any disclosure of this material to the Committee has consequences in the US courts, the Committee cannot protect you. Committee proceedings are subject to parliamentary privilege in the United Kingdom under Article IX of the 1689 Bill of Rights, but this legislation does not have extraterritorial effect and could not be expected to be upheld in a US court.

Yours sincerely,

Damian Collins MP
Chair, Digital, Culture, Media and Sport Committee

EXHIBIT 5



Theodore Kramer <theodore.kramer@gmail.com>

Extensive evidence relevant to Facebook's data and privacy abuses

COLLINS, Damian <damian.collins.mp@parliament.uk>

Tue, Nov 13, 2018 at 1:13 PM

To: Theodore Kramer <theodore.kramer@gmail.com>

Ted

One other thought, following the email I sent to you earlier.

Would we be clear to publish what you have already sent us as written evidence without there being any repercussions for you? [Whilst we have immunity, you still need to consider your own position]

Also would there be any other documents you could give us which are unrestricted and might help to add to the story?

Best wishes

Damian

Damian Collins

MP for Folkestone and Hythe

Chair of the Digital, Culture, Media and Sport Select Committee

T 020 7219 7072

www.damiancollins.com

From: Theodore Kramer <theodore.kramer@gmail.com>

Date: Monday, 1 October 2018 at 19:47

To: Damian Collins <damian.collins.mp@parliament.uk>

Subject: Extensive evidence relevant to Facebook's data and privacy abuses

Damian,

[Quoted text hidden]

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EXHIBIT 6

Accepted: Ted/Carole @ Mon Nov 19, 2018 9am - 10:30am (PST) (Theodore Kramer)

Carole Cadwalladr <carole.cadwalladr@guardian.co.uk>
Reply-To: Carole Cadwalladr <carole.cadwalladr@guardian.co.uk>
To: theodore.kramer@gmail.com

Mon, Nov 19, 2018 at 3:01 AM

Carole Cadwalladr has accepted this invitation.

Ted/Carole

When Mon Nov 19, 2018 9am – 10:30am Pacific Time - Los Angeles

Where London Marriott Hotel County Hall, London County Hall, Westminster Bridge Rd, South Bank, London SE1 7PB, UK ([map](#))

Calendar Theodore Kramer

Who

- Theodore Kramer - organizer
- carole_cadwalladr@hotmail.com
- Carole Cadwalladr

Invitation from [Google Calendar](#)

You are receiving this email at the account theodore.kramer@gmail.com because you are subscribed for invitation replies on calendar Theodore Kramer.

To stop receiving these emails, please log in to <https://www.google.com/calendar/> and change your notification settings for this calendar.

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 **invite.ics**
1K

EXHIBIT 7



Digital, Culture, Media and Sport Committee

House of Commons, London SW1A 0AA

Tel 020 7219 6120 Email cmscom@parliament.uk Website www.parliament.uk/cms

Mr Theodore Kramer
London Marriott Hotel County Hall
Westminster Bridge Rd
London SE1 7PB

19th November 2018

Dear Mr Kramer,

Order for documents

The Digital, Culture, Media and Sport Committee has been given the power by the House of Commons under Standing Order No. 152(4) "to send for persons, papers and records". This includes the power to compel the production of papers by people within UK jurisdiction.

On Monday 19 November, the Committee made the following order (which will be published in its formal minutes in due course):

Ordered, That Mr Theodore Kramer submit the following documents to the DCMS Committee in relation to its inquiry into Disinformation and 'fake news', by 5pm on 20th November 2018:

Unredacted copies of Six4Three's opposition to the anti-SLAPP (strategic lawsuits against public participation) motion, filed in the California courts, relating to the company's dispute with Facebook, along with any documents or notes relating to Six4Three's opposition to the anti-SLAPP motion.

We are requesting these documents because we believe that they contain information that is highly relevant to our ongoing investigation into disinformation and fake news. In particular, we are interested to know whether they can provide further insights to the committee about what senior executives at Facebook knew about concerns relating to Facebook users' data privacy, and developers' access to user data. The Committee's request is made for these reasons, and in no way suggests any support for the position of your organisation in its dispute with Facebook.

As noted in Erskine May's *Parliamentary Practice*: "there is no restriction on the power of committees to require the production of papers by private bodies or individuals provided that such papers are relevant to the committee's work as defined by its order of reference. [...] Solicitors have been ordered to produce papers relating to a client" (Erskine May, *Parliamentary Practice*, 24th edition, 2011, p.819.)

As Erskine May also notes: "Individuals have been held in contempt who [...] have disobeyed or frustrated committee orders for the production of papers" (p.839). Should you fail to comply with the order of the Committee and were found to be in contempt, you could face investigation and sanction by the House.

We require the documents by 5pm on Tuesday 20th November 2018. I look forward to your compliance with this Order.

Yours sincerely,

DAMIAN COLLINS MP

CHAIR, DIGITAL, CULTURE, MEDIA AND SPORT COMMITTEE



Digital, Culture, Media and Sport Committee

House of Commons, London SW1A 0AA

Tel 020 7219 6120 Email cmscom@parliament.uk Website www.parliament.uk/cms

19 November 2018

Extract from formal minutes of the Committee of 19 November 2018:

Ordered, That Mr Theodore Kramer submit the following documents to the DCMS Committee in relation to its inquiry into Disinformation and 'fake news', by 5pm on 20th November 2018:

Unredacted copies of Six4Three's opposition to the anti-SLAPP (strategic lawsuits against public participation) motion, filed in the California courts, relating to the company's dispute with Facebook, along with any documents or notes relating Six4Three's opposition to the anti-SLAPP motion.

DAMIAN COLLINS MP

CHAIR, DCMS COMMITTEE

EXHIBIT 8



Digital, Culture, Media and Sport Committee

House of Commons, London SW1A 0AA

Tel 020 7219 6120; Email: cmscom@parliament.uk; Website: www.parliament.uk/cms

Mr Theodore Kramer
London Marriott Hotel County Hall
Westminster Bridge Rd
London SE1 7PB

21 November 2018

Dear Mr Kramer,

Order for documents

I wrote to you on Monday 19 November to order documents under the Committee's power under Standing Order No. 152(4) "to send for persons, papers and records". This includes the power to compel the production of papers by people within UK jurisdiction.

As I said, on Monday 19 November, the Committee made the following order (which will be published in its formal minutes in due course):

Ordered, That Mr Theodore Kramer submit the following documents to the DCMS Committee in relation to its inquiry into Disinformation and 'fake news', by 5pm on 20th November 2018:

Unredacted copies of Six4Three's opposition to the anti-SLAPP (strategic lawsuits against public participation) motion, filed in the California courts, relating to the company's dispute with Facebook, along with any documents or notes relating to Six4Three's opposition to the anti-SLAPP motion.

You did not comply with this order by the 5pm deadline and failed to supply us with a satisfactory reason for not doing so.

We are re-issuing the Order, with a deadline of 11am today. Should you fail to respond by this time it will be my duty to ask the Committee immediately to report this matter to the House of Commons, and request that it take action against you. As a result of failing to comply with an Order of the Committee you could be considered to be acting in contempt and face investigation and sanction by the House.

I have asked that the Serjeant at Arms, as warrant officer of the House, deliver this letter to you in person.

Yours sincerely,

DAMIAN COLLINS MP,
CHAIR, DIGITAL, CULTURE, MEDIA AND SPORT COMMITTEE

EXHIBIT 9



Digital, Culture, Media and Sport Committee

House of Commons, London SW1A 0AA

Tel 020 7219 6120; Email: cmscom@parliament.uk; Website: www.parliament.uk/cms

Mr Theodore Kramer
London Marriott Hotel County Hall
Westminster Bridge Rd
London SE1 7PB

21 November 2018

Dear Mr Kramer,

Order for documents

On Monday 19 November, the Committee made the following Order:

Ordered, That Mr Theodore Kramer submit the following documents to the DCMS Committee in relation to its inquiry into Disinformation and 'fake news', by 5pm on 20th November 2018:

Unredacted copies of Six4Three's opposition to the anti-SLAPP (strategic lawsuits against public participation) motion, filed in the California courts, relating to the company's dispute with Facebook, along with any documents or notes relating Six4Three's opposition to the anti-SLAPP motion.

You did not comply with this order by the 5pm deadline, and failed to supply us with a satisfactory reason for not doing so.

I re-issued the Order on 20 November, with a deadline of 11am today. In the accompanying letter, I warned you that, should you fail to respond by the 11am deadline today, it would be my duty to ask the Committee immediately to report this matter to the House of Commons, and request that it take action against you. As a result of failing to comply with an Order of the Committee you could be considered to be acting in contempt and face investigation and sanction by the House.

The letter was delivered to you in person at 9am this morning by the Serjeant at Arms, as warrant officer of the House.

You again failed to comply.

As a result, the Committee met at 11am and formally ordered that I report your non-compliance to the House. I have taken this action, and reported your failure to comply to the House. This will appear on today's formal record, and the process of investigation will commence.

Yours sincerely,

DAMIAN COLLINS MP,
CHAIR, DIGITAL, CULTURE, MEDIA AND SPORT COMMITTEE

EXHIBIT 10



Digital, Culture, Media and Sport Committee

House of Commons, London SW1A 0AA

Tel 020 7219 6120; Email: cmscom@parliament.uk; Website: www.parliament.uk/cms

Mr Theodore Kramer
1267 Chestnut Street
Apt 6, San Francisco
California 94109

22 November 2018

Dear Mr Kramer

This letter confirms that Six4Three have provided the documents that the Committee ordered.

We are grateful for your compliance. The Committee does not propose to take any further steps in respect of any potential contempt of Parliament.

Yours sincerely,

DAMIAN COLLINS MP
CHAIR, DIGITAL, CULTURE, MEDIA AND SPORT COMMITTEE

EXHIBIT 46

1 Stuart G. Gross (#251019)
sgross@grosskleinlaw.com
2 Benjamin H. Klein (#313922)
bklein@grosskleinlaw.com
3 GROSS & KLEIN LLP
The Embarcadero, Pier 9, Suite 100
4 San Francisco, CA 94111
(415) 671-4628

5 Of counsel:

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11 Attorneys for Plaintiff,
SIX4THREE, LLC, a Delaware
12 limited liability company

13
14 SUPERIOR COURT OF CALIFORNIA
15 COUNTY OF SAN MATEO

16 SIX4THREE, LLC, a Delaware limited
17 liability company,

18 Plaintiff,

19 v.

20 FACEBOOK, INC., et al.,

21 Defendants.

) Case No. CIV 533328
)
)

) **Assigned for all purposes to Hon. V.**
) **Raymond Swope, Dept. 23**
)

) **DECLARATION OF DAVID S.**
) **GODKIN IN SUPPORT OF**
) **PLAINTIFF'S BRIEF IN RESPONSE**
) **TO NOVEMBER 20, 2018 ORDER**
)

22 Department: 23
Judge: Honorable V. Raymond Swope
23 Filing Date: April 10, 2015
Trial Date: April 25, 2019

1 I, David S. Godkin, declare:

2 1. I am an attorney at law and a member of the Law Offices of Birnbaum &
3 Godkin, LLP, counsel for plaintiff Six4Three, LLC ("643") in the above-captioned action. I
4 make this Declaration from personal knowledge, and if called to testify, I could and would
5 competently testify thereto.

6 2. Attached hereto as Exhibit 1 is a true and correct copy of a letter I sent to the
7 Digital Culture, Media and Sports Committee of the United Kingdom's House of Commons
8 ("DCMS") on November 19, 2018.

9 3. Attached hereto as Exhibit 2 is a true and correct copy of a letter I sent to Durie
10 Tangri on November 19, 2018.

11 4. My administrative assistant forwarded to Mr. Kramer copies of Exhibit 1 and
12 Exhibit 2 to my declaration just after they were sent to DCMS and Durie Tangri, respectively.

13 5. On the evening of November 19, 2018, Defendants' counsel sent a letter to
14 Plaintiff's counsel that stated *inter alia* "[u]nder the plain terms of the protective order, Mr.
15 Kramer should not have access to Facebook's Highly Confidential Information, including
16 Six4Three's unredacted opposition to Facebook's anti-SLAPP briefing." Attached hereto as
17 Exhibit 3 is a true and correct copy of the letter Durie Tangri sent to Plaintiff's counsel on
18 November 19, 2018.

19 6. I understood, at the time of receipt of Exhibit 3, that Mr. Kramer did not have
20 access to any documents or information designated highly confidential. Thus, I, along with Mr.
21 Gross immediately took actions to determine what, if any, basis there was for the suggestion by
22 Defendants' counsel that Mr. Kramer had such access.

23 7. We learned that a shared location had been created on a dropbox account into
24 which some documents designated as highly confidential and summaries of those documents
25 had been stored, and that because this dropbox account was owned by Six4Three, Mr. Kramer
26 technically had access to it as the administrator of the account.

27 8. In reaction, I confirmed that Mr. Kramer had never reviewed any such
28 documents or summaries and immediately took actions to have all such documents and

1 summaries moved to a location on the system of Mr. Gross to which only members of the legal
2 team had access, and have the documents deleted from any location to which Mr. Kramer had
3 access.

4 9. At the time I received Exhibit 3, I was not aware that the dropbox account in
5 question was set up to sync (i.e., save local copies of) the documents in question to the laptop
6 that Mr. Kramer had in his possession.

7 10. Attached hereto as Exhibit 4 is a true and correct copy of a letter I sent to
8 DCMS on November 20, 2018.

9 11. My administrative assistant forwarded Exhibit 4 to Mr. Kramer just after it was
10 sent to DCMS.

11 12. Attached hereto as Exhibit 5 is a true and correct copy of the Court's November
12 20, 2018 Order.

13 13. A copy of Exhibit 5 was emailed to Mr. Kramer just after receiving it.

14 14. Attached hereto as Exhibit 6 is a true and correct copy of a letter I sent to DCMS
15 on November 21, 2018. A copy of Exhibit 6 was emailed to Mr. Kramer after I sent it to
16 DCMS.

17 15. I affirm that Mr. Kramer did not consult with me upon receiving DCMS Order
18 #3 on or around 11am Greenwich Mean Time on November 21, 2018.

19 16. Attached hereto as Exhibit 7 is a true and correct copy of a letter I received from
20 DCMS on November 23, 2018.

21 17. On November 23, 2018, I learned for the first time that Mr. Kramer provided
22 documents to DCMS in contravention of the position I had taken in my letters to DCMS and
23 Defendants.

24 18. Attached hereto as Exhibit 8 is a true and correct copy of an email I sent to
25 Durie Tangri on November 23, 2018 at 6:37pm Eastern Standard Time.

26 19. Attached hereto as Exhibit 9 is a true and correct copy of an email I sent to
27 DCMS on November 23, 2018 at 6:45pm Eastern Standard Time.

20. Attached hereto as **Exhibit 10** is a true and correct copy of an email I received from DCMS on November 23, 2018 at 7:06 pm Eastern Standard Time.

21. Attached hereto as **Exhibit 11** is a true and correct copy of the Protective Order entered in this case on October 25, 2016.

22. I am not licensed to practice law in the United Kingdom and am not qualified to provide legal advice on issues pertaining to United Kingdom law.

23. I affirm that any factual assertions contained herein are supported by competent evidence to the extent such evidence exists and without waiver of any privilege.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed November 26, 2018 at Boston, Massachusetts.


David S. Godkin

EXHIBIT 1

November 19, 2018

BY EMAIL (damian.collins.mp@parliament.uk)

Mr. Damian Collins MP
Chair, Digital, Culture, Media and Sports Committee
House of Commons
London SW1A 0AA

*Re: Order for Documents Served on Six4Three's Principal, Ted Kramer, on
November 19, 2018*

Dear Mr. Collins:

I represent Mr. Kramer's firm, Six4Three, in *Six4Three, LLC v. Facebook, Inc., et al.*, Case No. Civ 533328, pending in California Superior Court, County of San Mateo. I am in receipt of an Order for Documents served upon Mr. Kramer this morning, November 19, 2018 from the Parliament of the United Kingdom to compel the production of certain documents in his possession ("Order," attached hereto as Exhibit A), including:

Unredacted copies of Six4Three's opposition to the anti-SLAPP (strategic lawsuits against public participation) motion, filed in the California courts, relating to the company's dispute with Facebook, along with any documents or notes relating Six4Three's opposition to the anti-SLAPP motion.

Order, at 1. The Order further requires Mr. Kramer to comply no later than 5pm local time on Tuesday, November 20th, 2018 or he may be held in contempt and could face investigation and sanction by Parliament.

I write to notify you that some of the documents you have requested are subject to a Protective Order entered October 25, 2016 ("Protective Order," attached hereto as Exhibit B). This letter serves as your immediate notice of the Protective Order as required under its Section 16(b).

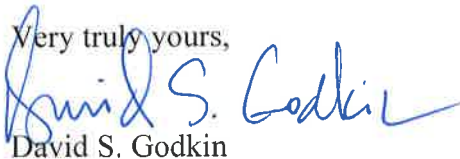
Further, for avoidance of doubt, please note the procedure available to Defendants under the Protective Order:

"If the designating party timely seeks a protective order, the party served with the subpoena or court order shall not produce any Confidential Information or Highly Confidential Information



before a determination *by the court from which the subpoena or order issued*, unless the party has obtained the designating party's permission. The designating party shall bear the burden and expense of seeking protection *in that court* of its confidential material—and nothing in these provisions should be construed as authorizing or encouraging a receiving party in this action to disobey a lawful directive from another court” (emphasis added).

Protective Order, Section 16, at 10-11. My client is required to and will comply with this procedure set forth in the Protective Order. If Defendants intend to seek relief in the Parliament of the United Kingdom, which is the entity “from which the subpoena or order issued,” we have requested they do so prior to the deadline imposed by the Order.

Very truly yours,

David S. Godkin

DSG:cam

cc: Ms. Chloe Challender (By email to challenderc@parliament.uk)
Culture, Media & Sport Committee (By email to CMSCOM@parliament.uk)
Joshua Lerner, Esq. (By email)
Sonal Mehta, Esq. (By email)
Catherine Kim, Esq. (By email)
Service-Six4Three (By email)
Stuart G. Gross, Esq. (By email)
James E. Kruzer, Esq. (By email)

EXHIBIT A



Digital, Culture, Media and Sport Committee

House of Commons, London SW1A 0AA

Tel 020 7219 6120 Email cmscom@parliament.uk Website www.parliament.uk/cms

Mr Theodore Kramer
London Marriott Hotel County Hall
Westminster Bridge Rd
London SE1 7PB

19th November 2018

Dear Mr Kramer,

Order for documents

The Digital, Culture, Media and Sport Committee has been given the power by the House of Commons under Standing Order No. 152(4) "to send for persons, papers and records". This includes the power to compel the production of papers by people within UK jurisdiction.

On Monday 19 November, the Committee made the following order (which will be published in its formal minutes in due course):

Ordered, That Mr Theodore Kramer submit the following documents to the DCMS Committee in relation to its inquiry into Disinformation and 'fake news', by 5pm on 20th November 2018:

Unredacted copies of Six4Three's opposition to the anti-SLAPP (strategic lawsuits against public participation) motion, filed in the California courts, relating to the company's dispute with Facebook, along with any documents or notes relating to Six4Three's opposition to the anti-SLAPP motion.

We are requesting these documents because we believe that they contain information that is highly relevant to our ongoing investigation into disinformation and fake news. In particular, we are interested to know whether they can provide further insights to the committee about what senior executives at Facebook knew about concerns relating to Facebook users' data privacy, and developers' access to user data. The Committee's request is made for these reasons, and in no way suggests any support for the position of your organisation in its dispute with Facebook.

As noted in Erskine May's *Parliamentary Practice*: "there is no restriction on the power of committees to require the production of papers by private bodies or individuals provided that such papers are relevant to the committee's work as defined by its order of reference. [...] Solicitors have been ordered to produce papers relating to a client" (Erskine May, *Parliamentary Practice*, 24th edition, 2011, p.819.)

As Erskine May also notes: "Individuals have been held in contempt who [...] have disobeyed or frustrated committee orders for the production of papers" (p.839). Should you fail to comply with the order of the Committee and were found to be in contempt, you could face investigation and sanction by the House.

We require the documents by 5pm on Tuesday 20th November 2018. I look forward to your compliance with this Order.

Yours sincerely,

DAMIAN COLLINS MP

CHAIR, DIGITAL, CULTURE, MEDIA AND SPORT COMMITTEE



Digital, Culture, Media and Sport Committee

House of Commons, London SW1A 0AA

Tel 020 7219 6120 Email cmscom@parliament.uk Website www.parliament.uk/cms

19 November 2018

Extract from formal minutes of the Committee of 19 November 2018:

Ordered, That Mr Theodore Kramer submit the following documents to the DCMS Committee in relation to its inquiry into Disinformation and 'fake news', by 5pm on 20th November 2018:

Unredacted copies of Six4Three's opposition to the anti-SLAPP (strategic lawsuits against public participation) motion, filed in the California courts, relating to the company's dispute with Facebook, along with any documents or notes relating Six4Three's opposition to the anti-SLAPP motion.

DAMIAN COLLINS MP

CHAIR, DCMS COMMITTEE

EXHIBIT B

1 Julie E. Schwartz, Bar No. 260624
JSchwartz@perkinscoie.com
2 PERKINS COIE LLP
3150 Porter Drive
3 Palo Alto, CA 94304-1212
Telephone: 650.838.4300
4 Facsimile: 650.838.4350

5 James R. McCullagh, admitted *pro hac vice*
JMcCullagh@perkinscoie.com
6 PERKINS COIE LLP
1201 Third Avenue, Suite 4900
7 Seattle, WA 98101-3099
Telephone: 206.359.8000
8 Facsimile: 206.359.9000

9 Attorneys for Defendant
Facebook, Inc.

FILED
SAN MATEO COUNTY

OCT 25 2016

Clerk of the Superior Court

By

DEPUTY CLERK

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12 **COUNTY OF SAN MATEO**

14 SIX4THREE, LLC, a Delaware limited
liability company,

15
16 Plaintiff,

17 v.

18 FACEBOOK, INC., a Delaware
corporation and DOES 1-50, inclusive,

19 Defendant.
20

Case No. CIV533328

**STIPULATED [PROPOSED]
PROTECTIVE ORDER**

21 In order to protect confidential information obtained by the parties in connection with this
22 case, the parties, by and through their respective undersigned counsel and subject to the approval
23 of the Court, hereby agree as follows:

24 **Part One: Use Of Confidential Materials In Discovery**

25 1. Any party or non-party may designate as Confidential Information (by stamping
26 the relevant page or as otherwise set forth herein) any document or response to discovery which
27 that party or non-party considers in good faith to contain information involving trade secrets, or
28

CIV533328
ORD
Order
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-1-

STIPULATED [PROPOSED] PROTECTIVE ORDER
CASE NO. CIV533328

1 confidential business, financial, or personal information, including personal financial information
2 about any individual or entity; information regarding any individual's or entity's banking
3 relationship with any banking institution, including information regarding financial transactions
4 or financial accounts, and any information regarding any individual or entity that is not otherwise
5 available to the public, subject to protection under Rules 2.550, 2.551, 2.580, 2.585, 8.160, and
6 8.490 of the California Rules of Court or under other provisions of California law. Any party or
7 non-party may designate as Highly Confidential Information (by stamping the relevant page or as
8 otherwise set forth herein) any document or response to discovery which that party or non-party
9 considers in good faith to contain information involving highly sensitive trade secrets or
10 confidential business, financial, or personal information, the disclosure of which would result in
11 the disclosure of trade secrets or other highly sensitive research, development, production,
12 personnel, commercial, market, financial, or business information, or highly sensitive personal
13 information, subject to protection under Rules 2.550, 2.551, 2.580, 2.585, 8.160, and 8.490 of the
14 California Rules of Court or under other provisions of California law. Where a document or
15 response consists of more than one page, the first page and each page on which confidential
16 information appears shall be so designated.

17 2. A party or non-party may designate information disclosed during a deposition or in
18 response to written discovery as Confidential Information or Highly Confidential Information by
19 so indicating in said responses or on the record at the deposition and requesting the preparation of
20 a separate transcript of such material. In addition, a party or non-party may designate in writing,
21 within thirty (30) days after receipt of said responses or of the deposition transcript for which the
22 designation is proposed, that specific pages of the transcript and/or specific responses be treated
23 as Confidential Information or Highly Confidential Information. Any other party may object to
24 such proposal, in writing or on the record. Upon such objection, the parties shall follow the
25 procedures described in Paragraph 9 below. Until the thirty (30) day period for designation has
26 lapsed, the entirety of each deposition transcript shall be treated as Confidential Information.
27 After the thirty (30) day period for designation has lapsed, any documents or information
28 designated pursuant to the procedure set forth in this paragraph shall be treated according to the

1 designation until the matter is resolved according to the procedures described in Paragraph 9
2 below, and counsel for all parties shall be responsible for marking all previously unmarked copies
3 of the designated material in their possession or control with the specified designation. A party
4 that makes original documents or materials available for inspection need not designate them as
5 Confidential Information or Highly Confidential Information until after the inspecting party has
6 indicated which materials it would like copied and produced. During the inspection and before the
7 designation and copying, all of the material made available for inspection shall be considered
8 Highly Confidential Information.

9 3. All Confidential Information or Highly Confidential Information produced or
10 exchanged in the course of this case (not including information that is publicly available) shall be
11 used by the party or parties to whom the information is produced solely for the purpose of this
12 case. Confidential Information or Highly Confidential Information shall not be used for any
13 commercial competitive, personal, or other purpose. Confidential Information or Highly
14 Confidential Information must be stored and maintained by a receiving party at a location and in a
15 secure manner that ensures that access is limited to the persons authorized under this Stipulated
16 Protective Order. The protections conferred by this Stipulated Protective Order cover not only
17 the Confidential Information or Highly Confidential Information produced or exchanged in this
18 case, but also (1) any information copied or extracted from or reflecting the Confidential
19 Information or Highly Confidential Information; (2) all copies, excerpts, summaries, or
20 compilations of Confidential Information or Highly Confidential Information; and (3) any
21 testimony, conversations, or presentations by parties or their counsel that might reveal
22 Confidential Information or Highly Confidential Information. However, the protections
23 conferred by this Stipulated Protective Order do not cover the following information: (a) any
24 information that is in the public domain at the time of disclosure to a receiving party or becomes
25 part of the public domain after its disclosure to a receiving party as a result of publication not
26 involving a violation of this Stipulated Protective Order, including becoming part of the public
27 record through trial or otherwise; and (b) any information known to the receiving party prior to
28

1 the disclosure or obtained by the receiving party after the disclosure from a source who obtained
2 the information lawfully and under no obligation of confidentiality to the designating party.

3 4. Except with the prior written consent of the other parties, or upon prior order of
4 this Court obtained upon notice to opposing counsel, Confidential Information shall not be
5 disclosed to any person other than:

- 6 (a) counsel for the respective parties to this litigation, including in-house
7 counsel and co-counsel retained for this litigation;
- 8 (b) employees of such counsel;
- 9 (c) individual parties or officers or employees of a party, to the extent deemed
10 necessary by counsel for the prosecution or defense of this litigation;
- 11 (d) consultants or expert witnesses retained for the prosecution or defense of
12 this litigation, provided that each such person shall execute a copy of the
13 Certification annexed to this Order (which shall be retained by counsel to
14 the party so disclosing the Confidential Information and made available
15 for inspection by opposing counsel during the pendency or after the
16 termination of the action only upon good cause shown and upon order of
17 the Court) before being shown or given any Confidential Information, and
18 provided that if the party chooses a consultant or expert employed by the
19 opposing party or one of its competitors, the party shall notify the
20 opposing party, or designating non-party, before disclosing any
21 Confidential Information to that individual and shall give the opposing
22 party an opportunity to move for a protective order preventing or limiting
23 such disclosure;
- 24 (e) any authors or recipients of the Confidential Information or a custodian;
- 25 (f) the Court, court personnel, and court reporters; and
- 26 (g) witnesses (other than persons described in Paragraph 4(e)). A witness shall
27 sign the Certification before being shown a confidential document.
28 Confidential Information may be disclosed to a witness who will not sign

1 the Certification only in a deposition at which the party who designated
2 the Confidential Information is represented or has been given notice that
3 Confidential Information produced by the party may be used. At the
4 request of any party, the portion of the deposition transcript involving the
5 Confidential Information shall be designated "Confidential" pursuant to
6 Paragraph 2 above. Witnesses shown Confidential Information shall not be
7 allowed to retain copies.

8 5. Except with the prior written consent of the other parties, or upon prior order of
9 this Court obtained after notice to opposing counsel, Highly Confidential Information shall be
10 treated in the same manner as Confidential Information pursuant to Paragraph 4 above, except
11 that it shall not be disclosed to individual parties or directors, officers or employees of a party, or
12 to witnesses (other than persons described in Paragraph 4(a) or 4(e)).

13 6. Any persons receiving Confidential Information or Highly Confidential
14 Information shall not reveal or discuss such information to or with any person who is not entitled
15 to receive such information, except as set forth herein. If a party or any of its representatives,
16 including counsel, inadvertently discloses any Confidential Information or Highly Confidential
17 Information to persons who are not authorized to use or possess such material, the party shall
18 provide immediate written notice of the disclosure to the party whose material was inadvertently
19 disclosed. If a party has actual knowledge that Confidential Information or Highly Confidential
20 Information is being used or possessed by a person not authorized to use or possess that material,
21 regardless of how the material was disclosed or obtained by such person, the party shall provide
22 immediate written notice of the unauthorized use or possession to the party whose material is
23 being used or possessed. No party shall have an affirmative obligation to inform itself regarding
24 such possible use or possession.

25 7. In connection with discovery proceedings as to which a party submits Confidential
26 Information or Highly Confidential Information, all documents and chamber copies containing
27 Confidential Information or Highly Confidential Information which are submitted to the Court
28 shall be filed with the Court in sealed envelopes or other appropriate sealed containers. On the

1 outside of the envelopes, a copy of the first page of the document shall be attached. If
2 Confidential Information or Highly Confidential Information is included in the first page attached
3 to the outside of the envelopes, it may be deleted from the outside copy. The word
4 "CONFIDENTIAL" shall be stamped on the envelope and a statement substantially in the
5 following form shall also be printed on the envelope:

6 "This envelope is sealed pursuant to Order of the Court, contains Confidential
7 Information and is not to be opened or the contents revealed, except by Order of the
8 Court or agreement by the parties."

9 8. A party may designate as Confidential Information or Highly Confidential
10 Information documents or discovery materials produced by a non-party by providing written
11 notice to all parties of the relevant document numbers or other identification within thirty (30)
12 days after receiving such documents or discovery materials. Until the thirty (30) day period for
13 designation has lapsed, any documents or discovery materials produced by a non-party shall be
14 treated at Confidential Information. Any party or non-party may voluntarily disclose to others
15 without restriction any information designated by that party or nonparty as Confidential
16 Information or Highly Confidential Information, although a document may lose its confidential
17 status if it is made public. If a party produces materials designated Confidential Information or
18 Highly Confidential Information in compliance with this Order, that production shall be deemed
19 to have been made consistent with any confidentiality or privacy requirements mandated by local,
20 state or federal laws.

21 9. If a party contends that any material is not entitled to confidential treatment, such
22 party may at any time give written notice to the party or non-party who designated the material.
23 The party or non-party who designated the material shall have twenty (20) days from the receipt
24 of such written notice to apply to the Court for an order designating the material as confidential.
25 The party or non-party seeking the order has the burden of establishing that the document is
26 entitled to protection.
27
28

1 10. Notwithstanding any challenge to the designation of material as Confidential
2 Information or Highly Confidential Information, all documents shall be treated as such and shall
3 be subject to the provisions hereof unless and until one of the following occurs:

4 (a) the party or non-party who claims that the material is Confidential
5 Information or Highly Confidential Information withdraws such
6 designation in writing; or

7 (b) the party or non-party who claims that the material is Confidential
8 Information or Highly Confidential Information fails to apply to the Court
9 for an order designating the material confidential within the time period
10 specified above after receipt of a written challenge to such designation; or

11 (c) the Court rules the material is not Confidential Information or Highly
12 Confidential Information.

13 11. All provisions of this Order restricting the communication or use of Confidential
14 Information or Highly Confidential Information shall continue to be binding after the conclusion
15 of this action, unless otherwise agreed or ordered. Upon conclusion of the litigation, a party in the
16 possession of Confidential Information or Highly Confidential Information shall within sixty (60)
17 days either (a) return such documents to counsel for the party or non-party who provided such
18 information, or (b) destroy such documents. Whether the Confidential Information or Highly
19 Confidential Information is returned or destroyed, the receiving party must submit a written
20 certification to the producing party (and, if not the same person or entity, to the designating party)
21 by the 60 day deadline that (1) all the Confidential Information or Highly Confidential
22 Information that was returned or destroyed, and (2) affirms that the receiving party has not
23 retained any copies, abstracts, compilations, summaries or any other format reproducing or
24 capturing any of the Confidential Information or Highly Confidential Information.

25 Notwithstanding this provision, counsel are entitled to retain an archival copy of all pleadings,
26 motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence,
27 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert
28 work product, even if such materials contain Confidential Information or Highly Confidential

1 Information. Any such archival copies that contain or constitute Confidential Information or
2 Highly Confidential Information remain subject to this Stipulated Protective Order. The
3 conclusion of the litigation shall be deemed to be the later of (1) dismissal of all claims and
4 defenses in this action, with or without prejudice; and (2) final judgment herein after the
5 completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
6 including the time limits for filing any motions or applications for extension of time pursuant to
7 applicable law. After the conclusion of this action, this Court will retain jurisdiction to enforce
8 the terms of this Order.

9 12. Nothing herein shall be deemed to waive any applicable privilege or work product
10 protection, or to affect the ability of a party to seek relief for an inadvertent disclosure of material
11 protected by privilege or work product protection. Any witness or other person, firm or entity
12 from which discovery is sought may be informed of and may obtain the protection of this Order
13 by written advice to the parties' respective counsel or by oral advice at the time of any deposition
14 or similar proceeding.

15 13. In the event that any Confidential Information or Highly Confidential Information
16 is inadvertently produced without such designation, the party or non-party that inadvertently
17 produced the information without designation shall give written notice of such inadvertent
18 production promptly after the party or non-party discovers the inadvertent failure to designate
19 (but no later than fourteen (14) calendar days after the party or non-party discovers the
20 inadvertent failure to designate), together with a further copy of the subject information
21 designated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" (the "Inadvertent Production
22 Notice"). Upon receipt of such Inadvertent Production Notice, the party that received the
23 information that was inadvertently produced without designation shall promptly destroy the
24 inadvertently produced information and all copies thereof, or, at the expense of the producing
25 party or non-party, return such together with all copies of such information to counsel for the
26 producing party and shall retain only the newly-produced versions of that information that are
27 designated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL." This provision is not
28 intended to apply to any inadvertent production of any information or materials protected by

1 attorney-client or work product privileges, which inadvertent production is governed by Section
2 14 below.

3 14. In the event that any party or non-party inadvertently produces information that is
4 privileged or otherwise protected from disclosure during the discovery process ("Inadvertent
5 Production Material"), the following shall apply:

6 (a) Such inadvertent production or disclosure shall in no way prejudice or
7 otherwise constitute a waiver of, or estoppel as to, any claim of attorney-client privilege, attorney
8 work product protection, or other applicable protection in this case or any other federal or state
9 proceeding, provided that the producing party shall notify the receiving party in writing of such
10 protection or privilege promptly after the producing party discovers such materials have been
11 inadvertently produced.

12 (b) If a claim of inadvertent production is made, pursuant to this Stipulated
13 Protective Order, with respect to discovery material then in the custody of another party, that
14 party shall: (i) refrain from any further examination or disclosure of the claimed Inadvertent
15 Production Material; (ii) promptly make a good-faith effort to return the claimed Inadvertent
16 Production Material and all copies thereof (including summaries and excerpts) to counsel for the
17 producing party, or destroy all such claimed Inadvertent Production Material (including
18 summaries and excerpts) and certify in writing to that fact; and (iii) not disclose or use the
19 claimed Inadvertent Production Material for any purpose until further order of the Court expressly
20 authorizing such use.

21 (c) A party may move the Court for an order compelling production of the
22 Inadvertent Production Material on the ground that it is not, in fact, privileged or protected. The
23 motion shall be filed under seal and shall not assert as a ground for entering such an order the fact
24 or circumstance of the inadvertent production. The producing party retains the burden of
25 establishing the privileged or protected nature of any inadvertently disclosed or produced
26 information. While such a motion is pending, the Inadvertent Production Material at issue shall
27 be treated in accordance with Paragraph 14(b) above.
28

1 (d) If a party, in reviewing discovery material it has received from any other
2 party or any non-party, finds anything the reviewing party believes in good faith may be
3 Inadvertent Production Material, the reviewing party shall: (i) refrain from any further
4 examination or disclosure of the potentially Inadvertent Production Material; (ii) promptly
5 identify the material in question to the producing party (by document number or other equally
6 precise description); and (iii) give the producing party seven (7) days to respond as to whether the
7 producing party will make a claim of inadvertent production. If the producing party makes such a
8 claim, the provisions of Paragraphs 14(a)-(c) above shall apply.

9 15. The parties agree that should the production of source code become necessary,
10 they will need to amend or supplement the terms of this Order. To the extent production of
11 source code becomes necessary in this case, the parties will work expeditiously to propose
12 amendments to this Order to cover any production of source code.

13 16. If a party is served with a subpoena or a court order issued in other litigation that
14 compels disclosure of any Confidential Information or Highly Confidential Information, the
15 receiving party must:

16 (a) promptly notify in writing the designating party. Such notification shall
17 include a copy of the subpoena or court order;

18 (b) promptly notify in writing the party who caused the subpoena or order to
19 issue in the other litigation that some or all of the material covered by the subpoena or order is
20 subject to this Stipulated Protective Order. Such notification shall include a copy of this
21 Stipulated Protective Order; and

22 (c) cooperate with respect to all reasonable procedures sought to be pursued by
23 the designating party whose Confidential Information or Highly Confidential Information may be
24 affected.

25 If the designating party timely seeks a protective order, the party served with the subpoena
26 or court order shall not produce any Confidential Information or Highly Confidential Information
27 before a determination by the court from which the subpoena or order issued, unless the party has
28 obtained the designating party's permission. The designating party shall bear the burden and

1 expense of seeking protection in that court of its confidential material—and nothing in these
2 provisions should be construed as authorizing or encouraging a receiving party in this action to
3 disobey a lawful directive from another court.

4 17. The following additional terms apply to non-party discovery material:

5 (a) The terms of this Order are applicable to information produced by a non-
6 party in this action and designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL.”
7 Such information produced by non-parties in connection with this litigation is protected by the
8 remedies and relief provided by this Order. Nothing in these provisions should be construed as
9 prohibiting a non-party from seeking additional protections.

10 (b) In the event that a party is required, by a valid discovery request, to
11 produce a non-party’s confidential information in its possession, and the party is subject to an
12 agreement with the non-party not to produce the non-party’s confidential information, then the
13 party shall:

14 i. promptly notify in writing the requesting party and the non-party
15 that some or all of the information requested is subject to a confidentiality agreement with a non-
16 party;

17 ii. promptly provide the non-party with a copy of the Stipulated
18 Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific
19 description of the information requested; and

20 iii. make the information requested available for inspection by the non-
21 party.

22 (c) If the non-party fails to object or seek a protective order from this Court
23 within 28 days of receiving the notice and accompanying information, the receiving party may
24 produce the non-party’s confidential information responsive to the discovery request. If the non-
25 party timely seeks a protective order, the receiving party shall not produce any information in its
26 possession or control that is subject to the confidentiality agreement with the non-party before a
27 determination by the Court. Absent a court order to the contrary, the non-party shall bear the
28

1 burden and expense of seeking protection in this Court of its Confidential Information or Highly
2 Confidential Information.

3 18. Nothing in this Stipulated Protective Order shall be construed to preclude any
4 party from asserting in good faith that certain Confidential Information or Highly Confidential
5 Information requires additional protections. The parties shall meet and confer to agree upon the
6 terms of such additional protection. By stipulating to the entry of this Protective Order no party
7 waives any right it otherwise would have to object to disclosing or producing any information or
8 item on any ground not addressed in this Stipulated Protective Order. Similarly, no party waives
9 any right to object on any ground to use in evidence of any of the material covered by this
10 Stipulated Protective Order. Nothing in this Stipulated Protective Order abridges the right of any
11 person to seek its modification by the Court in the future.

12 **Part Two: Use of Confidential Materials in Court**

13 The following provisions govern the treatment of Confidential Information or Highly
14 Confidential Information used at trial or submitted as a basis for adjudication of matters other
15 than discovery motions or proceedings. These provisions are subject to Rules 2.550, 2.551, 2.580,
16 2.585, 8.160, and 8.490 of the California Rules of Court and must be construed in light of those
17 Rules.

18 19. A party that files with the Court, or seeks to use at trial, materials designated as
19 Confidential Information or Highly Confidential Information, and who seeks to have the record
20 containing such information sealed, shall submit to the Court a motion or an application to seal,
21 pursuant to California Rule of Court 2.551.

22 20. A party that files with the Court, or seeks to use at trial, materials designated as
23 Confidential Information or Highly Confidential Information by anyone other than itself, and who
24 does not seek to have the record containing such information sealed, shall comply with either of
25 the following requirements:

- 26 (a) At least ten (10) business days prior to the filing or use of the Confidential
27 Information or Highly Confidential Information, the submitting party shall
28 give notice to all other parties, and to any non-party that designated the

1 materials as Confidential Information or Highly Confidential Information
2 pursuant to this Order, of the submitting party's intention to file or use the
3 Confidential Information or Highly Confidential Information, including
4 specific identification of the Confidential Information or Highly
5 Confidential Information. Any affected party or non-party may then file a
6 motion to seal, pursuant to California Rule of Court 2.551(b); or

7 (b) At the time of filing or desiring to use the Confidential Information or
8 Highly Confidential Information, the submitting party shall submit the
9 materials pursuant to the lodging-under-seal provision of California Rule of
10 Court 2.551(d). Any affected party or non-party may then file a motion to
11 seal, pursuant to the California Rule of Court 2.551(b), within ten (10)
12 business days after such lodging. Documents lodged pursuant to California
13 Rule of Court 2.551(d) shall bear a legend stating that such materials shall
14 be unsealed upon expiration of ten (10) business days, absent the filing of a
15 motion to seal pursuant to Rule 2.551(b) or Court order.

16 21. In connection with a request to have materials sealed pursuant to Paragraph 12 or
17 Paragraph 13, the requesting party's declaration pursuant to California Rule of Court 2.551(b)(1)
18 shall contain sufficient particularity with respect to the particular Confidential Information or
19 Highly Confidential Information and the basis for sealing to enable the Court to make the findings
20 required by California Rule of Court 2.550(d).

21 **IT IS SO STIPULATED.**

22
23 DATED: _____, 2016

24 **PERKINS COIE LLP**

25 By: _____
26 Julie E. Schwartz

27 *Attorneys for Defendant*
28 *Facebook, Inc.*

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DATED: _____, 2016

BIRNBAUM & GODKIN, LLP

By: _____
David Godkin

Attorneys for Plaintiff
SIX4THREE, LLC

IT IS SO ORDERED.

DATED: 10/24, 2016


JUDGE OF THE SUPERIOR COURT

CERTIFICATION

I hereby certify my understanding that Confidential Information or Highly Confidential Information is being provided to me pursuant to the terms and restrictions of the Stipulation and Protective Order Regarding Confidential Information filed on _____, 2016, in *Six4Three, LLC v. Facebook, Inc.*, San Mateo County Superior Court Case No. CIV533328 ("Order"). I have been given a copy of that Order and read it.

I agree to be bound by the Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I will not reveal the Confidential Information or Highly Confidential Information to anyone, except as allowed by the Order. I will maintain all such Confidential Information or Highly Confidential Information, including copies, notes, or other transcriptions made therefrom, in a secure manner to prevent unauthorized access to it. No later than thirty (30) days after the conclusion of this action, I will return the Confidential Information or Highly Confidential Information, including copies, notes, or other transcriptions made therefrom, to the counsel who provided me with the Confidential Information or Highly Confidential Information. I hereby consent to the jurisdiction of the San Mateo County Superior Court for the purpose of enforcing the Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ located at the address of _____ as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

I declare under penalty of perjury that the foregoing is true and correct and that this certificate is executed this ____ day of _____, 2016, at _____.

By: _____

Address: _____

Phone: _____

EXHIBIT 2

November 19, 2018

BY EMAIL

Sonal Mehta, Esq.
Joshua Lerner, Esq.
Laura Miller, Esq.
Durie Tangri
217 Leidesdorff Street
San Francisco, CA 94111

Re: Six4Three, LLC v. Facebook, Inc., et al.
California Superior Court, San Mateo
Case No. Civ 533328

Dear Counsel:

Please be advised that my client's principal, Ted Kramer, received this morning, November 19th, 2018, an Order for Documents ("Order," attached hereto as Exhibit A) from the Parliament of the United Kingdom to compel the production of certain documents in our possession, including:

Unredacted copies of Six4Three's opposition to the anti-SLAPP (strategic lawsuits against public participation) motion, filed in the California courts, relating to the company's dispute with Facebook, along with any documents or notes relating Six4Three's opposition to the anti-SLAPP motion.

Order, at 1. The Order further requires Mr. Kramer to comply no later than 5pm local time on Tuesday, November 20th, 2018 or he may be held in contempt and could face investigation and sanction by Parliament. Mr. Kramer is currently located in the United Kingdom for business meetings this week and is therefore subject to the jurisdiction of Parliament.

Pursuant to the Protective Order entered October 25, 2016 ("Protective Order," attached hereto as Exhibit B), this letter serves as prompt (immediate) notice of the Order as required under Section 16(a) and of 643's intent to cooperate with respect to all reasonable and timely relief Facebook may seek in Parliament, pursuant to Section 16(c).

Further, for avoidance of doubt, please note the procedure available to Defendants under the Protective Order:

Sonal Mehta, Esq.
Joshua Lerner, Esq.
Laura Miller, Esq.
November 19, 2018
Page 2



If the designating party timely seeks a protective order, the party served with the subpoena or court order shall not produce any Confidential Information or Highly Confidential Information before a determination by the court from which the subpoena or order *issued*, unless the party has obtained the designating party's permission. The designating party shall bear the burden and expense of seeking protection in that court of its confidential material—and nothing in these provisions should be construed as authorizing or encouraging a receiving party in this action to disobey a lawful directive from another court.

Protective Order, Section 16. Thus, if Facebook intends to seek relief in the Parliament of the United Kingdom, which is the entity “from which the subpoena or order issued,” we request that you please do so prior to the deadline imposed by the Order.

Very truly yours,

David S. Godkin

DSG:cam

Attachments

Cc: Catherine Kim, Esq. (By email)
Service-Six4Three (By email)
Stuart G. Gross, Esq. (By email)
James E. Kruzer, Esq. (By email)

EXHIBIT A



Digital, Culture, Media and Sport Committee

House of Commons, London SW1A 0AA

Tel 020 7219 6120 Email cmscom@parliament.uk Website www.parliament.uk/cms

Mr Theodore Kramer
London Marriott Hotel County Hall
Westminster Bridge Rd
London SE1 7PB

19th November 2018

Dear Mr Kramer,

Order for documents

The Digital, Culture, Media and Sport Committee has been given the power by the House of Commons under Standing Order No. 152(4) "to send for persons, papers and records". This includes the power to compel the production of papers by people within UK jurisdiction.

On Monday 19 November, the Committee made the following order (which will be published in its formal minutes in due course):

Ordered, That Mr Theodore Kramer submit the following documents to the DCMS Committee in relation to its inquiry into Disinformation and 'fake news', by 5pm on 20th November 2018:

Unredacted copies of Six4Three's opposition to the anti-SLAPP (strategic lawsuits against public participation) motion, filed in the California courts, relating to the company's dispute with Facebook, along with any documents or notes relating to Six4Three's opposition to the anti-SLAPP motion.

We are requesting these documents because we believe that they contain information that is highly relevant to our ongoing investigation into disinformation and fake news. In particular, we are interested to know whether they can provide further insights to the committee about what senior executives at Facebook knew about concerns relating to Facebook users' data privacy, and developers' access to user data. The Committee's request is made for these reasons, and in no way suggests any support for the position of your organisation in its dispute with Facebook.

As noted in Erskine May's *Parliamentary Practice*: "there is no restriction on the power of committees to require the production of papers by private bodies or individuals provided that such papers are relevant to the committee's work as defined by its order of reference. [...] Solicitors have been ordered to produce papers relating to a client" (Erskine May, *Parliamentary Practice*, 24th edition, 2011, p.819.)

As Erskine May also notes: "Individuals have been held in contempt who [...] have disobeyed or frustrated committee orders for the production of papers" (p.839). Should you fail to comply with the order of the Committee and were found to be in contempt, you could face investigation and sanction by the House.

We require the documents by 5pm on Tuesday 20th November 2018. I look forward to your compliance with this Order.

Yours sincerely,

DAMIAN COLLINS MP

CHAIR, DIGITAL, CULTURE, MEDIA AND SPORT COMMITTEE



Digital, Culture, Media and Sport Committee

House of Commons, London SW1A 0AA

Tel 020 7219 6120 Email cmscom@parliament.uk Website www.parliament.uk/cms

19 November 2018

Extract from formal minutes of the Committee of 19 November 2018:

Ordered, That Mr Theodore Kramer submit the following documents to the DCMS Committee in relation to its inquiry into Disinformation and 'fake news', by 5pm on 20th November 2018:

Unredacted copies of Six4Three's opposition to the anti-SLAPP (strategic lawsuits against public participation) motion, filed in the California courts, relating to the company's dispute with Facebook, along with any documents or notes relating Six4Three's opposition to the anti-SLAPP motion.

DAMIAN COLLINS MP

CHAIR, DCMS COMMITTEE

EXHIBIT B

1 Julie E. Schwartz, Bar No. 260624
JSchwartz@perkinscoie.com
2 PERKINS COIE LLP
3150 Porter Drive
3 Palo Alto, CA 94304-1212
Telephone: 650.838.4300
4 Facsimile: 650.838.4350

5 James R. McCullagh, admitted *pro hac vice*
JMcCullagh@perkinscoie.com
6 PERKINS COIE LLP
1201 Third Avenue, Suite 4900
7 Seattle, WA 98101-3099
Telephone: 206.359.8000
8 Facsimile: 206.359.9000

9 Attorneys for Defendant
Facebook, Inc.

FILED
SAN MATEO COUNTY

OCT 25 2016

Clerk of the Superior Court

By

DEPUTY CLERK

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12 **COUNTY OF SAN MATEO**

14 SIX4THREE, LLC, a Delaware limited
liability company,

15
16 Plaintiff,

17 v.

18 FACEBOOK, INC., a Delaware
corporation and DOES 1-50, inclusive,

19 Defendant.
20

Case No. CIV533328

**STIPULATED [PROPOSED]
PROTECTIVE ORDER**

21 In order to protect confidential information obtained by the parties in connection with this
22 case, the parties, by and through their respective undersigned counsel and subject to the approval
23 of the Court, hereby agree as follows:

24 **Part One: Use Of Confidential Materials In Discovery**

25 1. Any party or non-party may designate as Confidential Information (by stamping
26 the relevant page or as otherwise set forth herein) any document or response to discovery which
27 that party or non-party considers in good faith to contain information involving trade secrets, or
28

CIV533328
ORD
Order
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-1-

STIPULATED [PROPOSED] PROTECTIVE ORDER
CASE NO. CIV533328

1 confidential business, financial, or personal information, including personal financial information
2 about any individual or entity; information regarding any individual's or entity's banking
3 relationship with any banking institution, including information regarding financial transactions
4 or financial accounts, and any information regarding any individual or entity that is not otherwise
5 available to the public, subject to protection under Rules 2.550, 2.551, 2.580, 2.585, 8.160, and
6 8.490 of the California Rules of Court or under other provisions of California law. Any party or
7 non-party may designate as Highly Confidential Information (by stamping the relevant page or as
8 otherwise set forth herein) any document or response to discovery which that party or non-party
9 considers in good faith to contain information involving highly sensitive trade secrets or
10 confidential business, financial, or personal information, the disclosure of which would result in
11 the disclosure of trade secrets or other highly sensitive research, development, production,
12 personnel, commercial, market, financial, or business information, or highly sensitive personal
13 information, subject to protection under Rules 2.550, 2.551, 2.580, 2.585, 8.160, and 8.490 of the
14 California Rules of Court or under other provisions of California law. Where a document or
15 response consists of more than one page, the first page and each page on which confidential
16 information appears shall be so designated.

17 2. A party or non-party may designate information disclosed during a deposition or in
18 response to written discovery as Confidential Information or Highly Confidential Information by
19 so indicating in said responses or on the record at the deposition and requesting the preparation of
20 a separate transcript of such material. In addition, a party or non-party may designate in writing,
21 within thirty (30) days after receipt of said responses or of the deposition transcript for which the
22 designation is proposed, that specific pages of the transcript and/or specific responses be treated
23 as Confidential Information or Highly Confidential Information. Any other party may object to
24 such proposal, in writing or on the record. Upon such objection, the parties shall follow the
25 procedures described in Paragraph 9 below. Until the thirty (30) day period for designation has
26 lapsed, the entirety of each deposition transcript shall be treated as Confidential Information.
27 After the thirty (30) day period for designation has lapsed, any documents or information
28 designated pursuant to the procedure set forth in this paragraph shall be treated according to the

1 designation until the matter is resolved according to the procedures described in Paragraph 9
2 below, and counsel for all parties shall be responsible for marking all previously unmarked copies
3 of the designated material in their possession or control with the specified designation. A party
4 that makes original documents or materials available for inspection need not designate them as
5 Confidential Information or Highly Confidential Information until after the inspecting party has
6 indicated which materials it would like copied and produced. During the inspection and before the
7 designation and copying, all of the material made available for inspection shall be considered
8 Highly Confidential Information.

9 3. All Confidential Information or Highly Confidential Information produced or
10 exchanged in the course of this case (not including information that is publicly available) shall be
11 used by the party or parties to whom the information is produced solely for the purpose of this
12 case. Confidential Information or Highly Confidential Information shall not be used for any
13 commercial competitive, personal, or other purpose. Confidential Information or Highly
14 Confidential Information must be stored and maintained by a receiving party at a location and in a
15 secure manner that ensures that access is limited to the persons authorized under this Stipulated
16 Protective Order. The protections conferred by this Stipulated Protective Order cover not only
17 the Confidential Information or Highly Confidential Information produced or exchanged in this
18 case, but also (1) any information copied or extracted from or reflecting the Confidential
19 Information or Highly Confidential Information; (2) all copies, excerpts, summaries, or
20 compilations of Confidential Information or Highly Confidential Information; and (3) any
21 testimony, conversations, or presentations by parties or their counsel that might reveal
22 Confidential Information or Highly Confidential Information. However, the protections
23 conferred by this Stipulated Protective Order do not cover the following information: (a) any
24 information that is in the public domain at the time of disclosure to a receiving party or becomes
25 part of the public domain after its disclosure to a receiving party as a result of publication not
26 involving a violation of this Stipulated Protective Order, including becoming part of the public
27 record through trial or otherwise; and (b) any information known to the receiving party prior to
28

1 the disclosure or obtained by the receiving party after the disclosure from a source who obtained
2 the information lawfully and under no obligation of confidentiality to the designating party.

3 4. Except with the prior written consent of the other parties, or upon prior order of
4 this Court obtained upon notice to opposing counsel, Confidential Information shall not be
5 disclosed to any person other than:

- 6 (a) counsel for the respective parties to this litigation, including in-house
7 counsel and co-counsel retained for this litigation;
- 8 (b) employees of such counsel;
- 9 (c) individual parties or officers or employees of a party, to the extent deemed
10 necessary by counsel for the prosecution or defense of this litigation;
- 11 (d) consultants or expert witnesses retained for the prosecution or defense of
12 this litigation, provided that each such person shall execute a copy of the
13 Certification annexed to this Order (which shall be retained by counsel to
14 the party so disclosing the Confidential Information and made available
15 for inspection by opposing counsel during the pendency or after the
16 termination of the action only upon good cause shown and upon order of
17 the Court) before being shown or given any Confidential Information, and
18 provided that if the party chooses a consultant or expert employed by the
19 opposing party or one of its competitors, the party shall notify the
20 opposing party, or designating non-party, before disclosing any
21 Confidential Information to that individual and shall give the opposing
22 party an opportunity to move for a protective order preventing or limiting
23 such disclosure;
- 24 (e) any authors or recipients of the Confidential Information or a custodian;
- 25 (f) the Court, court personnel, and court reporters; and
- 26 (g) witnesses (other than persons described in Paragraph 4(e)). A witness shall
27 sign the Certification before being shown a confidential document.
28 Confidential Information may be disclosed to a witness who will not sign

1 the Certification only in a deposition at which the party who designated
2 the Confidential Information is represented or has been given notice that
3 Confidential Information produced by the party may be used. At the
4 request of any party, the portion of the deposition transcript involving the
5 Confidential Information shall be designated "Confidential" pursuant to
6 Paragraph 2 above. Witnesses shown Confidential Information shall not be
7 allowed to retain copies.

8 5. Except with the prior written consent of the other parties, or upon prior order of
9 this Court obtained after notice to opposing counsel, Highly Confidential Information shall be
10 treated in the same manner as Confidential Information pursuant to Paragraph 4 above, except
11 that it shall not be disclosed to individual parties or directors, officers or employees of a party, or
12 to witnesses (other than persons described in Paragraph 4(a) or 4(e)).

13 6. Any persons receiving Confidential Information or Highly Confidential
14 Information shall not reveal or discuss such information to or with any person who is not entitled
15 to receive such information, except as set forth herein. If a party or any of its representatives,
16 including counsel, inadvertently discloses any Confidential Information or Highly Confidential
17 Information to persons who are not authorized to use or possess such material, the party shall
18 provide immediate written notice of the disclosure to the party whose material was inadvertently
19 disclosed. If a party has actual knowledge that Confidential Information or Highly Confidential
20 Information is being used or possessed by a person not authorized to use or possess that material,
21 regardless of how the material was disclosed or obtained by such person, the party shall provide
22 immediate written notice of the unauthorized use or possession to the party whose material is
23 being used or possessed. No party shall have an affirmative obligation to inform itself regarding
24 such possible use or possession.

25 7. In connection with discovery proceedings as to which a party submits Confidential
26 Information or Highly Confidential Information, all documents and chamber copies containing
27 Confidential Information or Highly Confidential Information which are submitted to the Court
28 shall be filed with the Court in sealed envelopes or other appropriate sealed containers. On the

1 outside of the envelopes, a copy of the first page of the document shall be attached. If
2 Confidential Information or Highly Confidential Information is included in the first page attached
3 to the outside of the envelopes, it may be deleted from the outside copy. The word
4 "CONFIDENTIAL" shall be stamped on the envelope and a statement substantially in the
5 following form shall also be printed on the envelope:

6 "This envelope is sealed pursuant to Order of the Court, contains Confidential
7 Information and is not to be opened or the contents revealed, except by Order of the
8 Court or agreement by the parties."

9 8. A party may designate as Confidential Information or Highly Confidential
10 Information documents or discovery materials produced by a non-party by providing written
11 notice to all parties of the relevant document numbers or other identification within thirty (30)
12 days after receiving such documents or discovery materials. Until the thirty (30) day period for
13 designation has lapsed, any documents or discovery materials produced by a non-party shall be
14 treated as Confidential Information. Any party or non-party may voluntarily disclose to others
15 without restriction any information designated by that party or nonparty as Confidential
16 Information or Highly Confidential Information, although a document may lose its confidential
17 status if it is made public. If a party produces materials designated Confidential Information or
18 Highly Confidential Information in compliance with this Order, that production shall be deemed
19 to have been made consistent with any confidentiality or privacy requirements mandated by local,
20 state or federal laws.

21 9. If a party contends that any material is not entitled to confidential treatment, such
22 party may at any time give written notice to the party or non-party who designated the material.
23 The party or non-party who designated the material shall have twenty (20) days from the receipt
24 of such written notice to apply to the Court for an order designating the material as confidential.
25 The party or non-party seeking the order has the burden of establishing that the document is
26 entitled to protection.
27
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1 10. Notwithstanding any challenge to the designation of material as Confidential
2 Information or Highly Confidential Information, all documents shall be treated as such and shall
3 be subject to the provisions hereof unless and until one of the following occurs:

4 (a) the party or non-party who claims that the material is Confidential
5 Information or Highly Confidential Information withdraws such
6 designation in writing; or

7 (b) the party or non-party who claims that the material is Confidential
8 Information or Highly Confidential Information fails to apply to the Court
9 for an order designating the material confidential within the time period
10 specified above after receipt of a written challenge to such designation; or

11 (c) the Court rules the material is not Confidential Information or Highly
12 Confidential Information.

13 11. All provisions of this Order restricting the communication or use of Confidential
14 Information or Highly Confidential Information shall continue to be binding after the conclusion
15 of this action, unless otherwise agreed or ordered. Upon conclusion of the litigation, a party in the
16 possession of Confidential Information or Highly Confidential Information shall within sixty (60)
17 days either (a) return such documents to counsel for the party or non-party who provided such
18 information, or (b) destroy such documents. Whether the Confidential Information or Highly
19 Confidential Information is returned or destroyed, the receiving party must submit a written
20 certification to the producing party (and, if not the same person or entity, to the designating party)
21 by the 60 day deadline that (1) all the Confidential Information or Highly Confidential
22 Information that was returned or destroyed, and (2) affirms that the receiving party has not
23 retained any copies, abstracts, compilations, summaries or any other format reproducing or
24 capturing any of the Confidential Information or Highly Confidential Information.

25 Notwithstanding this provision, counsel are entitled to retain an archival copy of all pleadings,
26 motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence,
27 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert
28 work product, even if such materials contain Confidential Information or Highly Confidential

1 Information. Any such archival copies that contain or constitute Confidential Information or
2 Highly Confidential Information remain subject to this Stipulated Protective Order. The
3 conclusion of the litigation shall be deemed to be the later of (1) dismissal of all claims and
4 defenses in this action, with or without prejudice; and (2) final judgment herein after the
5 completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
6 including the time limits for filing any motions or applications for extension of time pursuant to
7 applicable law. After the conclusion of this action, this Court will retain jurisdiction to enforce
8 the terms of this Order.

9 12. Nothing herein shall be deemed to waive any applicable privilege or work product
10 protection, or to affect the ability of a party to seek relief for an inadvertent disclosure of material
11 protected by privilege or work product protection. Any witness or other person, firm or entity
12 from which discovery is sought may be informed of and may obtain the protection of this Order
13 by written advice to the parties' respective counsel or by oral advice at the time of any deposition
14 or similar proceeding.

15 13. In the event that any Confidential Information or Highly Confidential Information
16 is inadvertently produced without such designation, the party or non-party that inadvertently
17 produced the information without designation shall give written notice of such inadvertent
18 production promptly after the party or non-party discovers the inadvertent failure to designate
19 (but no later than fourteen (14) calendar days after the party or non-party discovers the
20 inadvertent failure to designate), together with a further copy of the subject information
21 designated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" (the "Inadvertent Production
22 Notice"). Upon receipt of such Inadvertent Production Notice, the party that received the
23 information that was inadvertently produced without designation shall promptly destroy the
24 inadvertently produced information and all copies thereof, or, at the expense of the producing
25 party or non-party, return such together with all copies of such information to counsel for the
26 producing party and shall retain only the newly-produced versions of that information that are
27 designated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL." This provision is not
28 intended to apply to any inadvertent production of any information or materials protected by

1 attorney-client or work product privileges, which inadvertent production is governed by Section
2 14 below.

3 14. In the event that any party or non-party inadvertently produces information that is
4 privileged or otherwise protected from disclosure during the discovery process ("Inadvertent
5 Production Material"), the following shall apply:

6 (a) Such inadvertent production or disclosure shall in no way prejudice or
7 otherwise constitute a waiver of, or estoppel as to, any claim of attorney-client privilege, attorney
8 work product protection, or other applicable protection in this case or any other federal or state
9 proceeding, provided that the producing party shall notify the receiving party in writing of such
10 protection or privilege promptly after the producing party discovers such materials have been
11 inadvertently produced.

12 (b) If a claim of inadvertent production is made, pursuant to this Stipulated
13 Protective Order, with respect to discovery material then in the custody of another party, that
14 party shall: (i) refrain from any further examination or disclosure of the claimed Inadvertent
15 Production Material; (ii) promptly make a good-faith effort to return the claimed Inadvertent
16 Production Material and all copies thereof (including summaries and excerpts) to counsel for the
17 producing party, or destroy all such claimed Inadvertent Production Material (including
18 summaries and excerpts) and certify in writing to that fact; and (iii) not disclose or use the
19 claimed Inadvertent Production Material for any purpose until further order of the Court expressly
20 authorizing such use.

21 (c) A party may move the Court for an order compelling production of the
22 Inadvertent Production Material on the ground that it is not, in fact, privileged or protected. The
23 motion shall be filed under seal and shall not assert as a ground for entering such an order the fact
24 or circumstance of the inadvertent production. The producing party retains the burden of
25 establishing the privileged or protected nature of any inadvertently disclosed or produced
26 information. While such a motion is pending, the Inadvertent Production Material at issue shall
27 be treated in accordance with Paragraph 14(b) above.
28

1 (d) If a party, in reviewing discovery material it has received from any other
2 party or any non-party, finds anything the reviewing party believes in good faith may be
3 Inadvertent Production Material, the reviewing party shall: (i) refrain from any further
4 examination or disclosure of the potentially Inadvertent Production Material; (ii) promptly
5 identify the material in question to the producing party (by document number or other equally
6 precise description); and (iii) give the producing party seven (7) days to respond as to whether the
7 producing party will make a claim of inadvertent production. If the producing party makes such a
8 claim, the provisions of Paragraphs 14(a)-(c) above shall apply.

9 15. The parties agree that should the production of source code become necessary,
10 they will need to amend or supplement the terms of this Order. To the extent production of
11 source code becomes necessary in this case, the parties will work expeditiously to propose
12 amendments to this Order to cover any production of source code.

13 16. If a party is served with a subpoena or a court order issued in other litigation that
14 compels disclosure of any Confidential Information or Highly Confidential Information, the
15 receiving party must:

16 (a) promptly notify in writing the designating party. Such notification shall
17 include a copy of the subpoena or court order;

18 (b) promptly notify in writing the party who caused the subpoena or order to
19 issue in the other litigation that some or all of the material covered by the subpoena or order is
20 subject to this Stipulated Protective Order. Such notification shall include a copy of this
21 Stipulated Protective Order; and

22 (c) cooperate with respect to all reasonable procedures sought to be pursued by
23 the designating party whose Confidential Information or Highly Confidential Information may be
24 affected.

25 If the designating party timely seeks a protective order, the party served with the subpoena
26 or court order shall not produce any Confidential Information or Highly Confidential Information
27 before a determination by the court from which the subpoena or order issued, unless the party has
28 obtained the designating party's permission. The designating party shall bear the burden and

1 expense of seeking protection in that court of its confidential material—and nothing in these
2 provisions should be construed as authorizing or encouraging a receiving party in this action to
3 disobey a lawful directive from another court.

4 17. The following additional terms apply to non-party discovery material:

5 (a) The terms of this Order are applicable to information produced by a non-
6 party in this action and designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL.”
7 Such information produced by non-parties in connection with this litigation is protected by the
8 remedies and relief provided by this Order. Nothing in these provisions should be construed as
9 prohibiting a non-party from seeking additional protections.

10 (b) In the event that a party is required, by a valid discovery request, to
11 produce a non-party’s confidential information in its possession, and the party is subject to an
12 agreement with the non-party not to produce the non-party’s confidential information, then the
13 party shall:

14 i. promptly notify in writing the requesting party and the non-party
15 that some or all of the information requested is subject to a confidentiality agreement with a non-
16 party;

17 ii. promptly provide the non-party with a copy of the Stipulated
18 Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific
19 description of the information requested; and

20 iii. make the information requested available for inspection by the non-
21 party.

22 (c) If the non-party fails to object or seek a protective order from this Court
23 within 28 days of receiving the notice and accompanying information, the receiving party may
24 produce the non-party’s confidential information responsive to the discovery request. If the non-
25 party timely seeks a protective order, the receiving party shall not produce any information in its
26 possession or control that is subject to the confidentiality agreement with the non-party before a
27 determination by the Court. Absent a court order to the contrary, the non-party shall bear the
28

1 burden and expense of seeking protection in this Court of its Confidential Information or Highly
2 Confidential Information.

3 18. Nothing in this Stipulated Protective Order shall be construed to preclude any
4 party from asserting in good faith that certain Confidential Information or Highly Confidential
5 Information requires additional protections. The parties shall meet and confer to agree upon the
6 terms of such additional protection. By stipulating to the entry of this Protective Order no party
7 waives any right it otherwise would have to object to disclosing or producing any information or
8 item on any ground not addressed in this Stipulated Protective Order. Similarly, no party waives
9 any right to object on any ground to use in evidence of any of the material covered by this
10 Stipulated Protective Order. Nothing in this Stipulated Protective Order abridges the right of any
11 person to seek its modification by the Court in the future.

12 **Part Two: Use of Confidential Materials in Court**

13 The following provisions govern the treatment of Confidential Information or Highly
14 Confidential Information used at trial or submitted as a basis for adjudication of matters other
15 than discovery motions or proceedings. These provisions are subject to Rules 2.550, 2.551, 2.580,
16 2.585, 8.160, and 8.490 of the California Rules of Court and must be construed in light of those
17 Rules.

18 19. A party that files with the Court, or seeks to use at trial, materials designated as
19 Confidential Information or Highly Confidential Information, and who seeks to have the record
20 containing such information sealed, shall submit to the Court a motion or an application to seal,
21 pursuant to California Rule of Court 2.551.

22 20. A party that files with the Court, or seeks to use at trial, materials designated as
23 Confidential Information or Highly Confidential Information by anyone other than itself, and who
24 does not seek to have the record containing such information sealed, shall comply with either of
25 the following requirements:

- 26 (a) At least ten (10) business days prior to the filing or use of the Confidential
27 Information or Highly Confidential Information, the submitting party shall
28 give notice to all other parties, and to any non-party that designated the

1 materials as Confidential Information or Highly Confidential Information
2 pursuant to this Order, of the submitting party's intention to file or use the
3 Confidential Information or Highly Confidential Information, including
4 specific identification of the Confidential Information or Highly
5 Confidential Information. Any affected party or non-party may then file a
6 motion to seal, pursuant to California Rule of Court 2.551(b); or

7 (b) At the time of filing or desiring to use the Confidential Information or
8 Highly Confidential Information, the submitting party shall submit the
9 materials pursuant to the lodging-under-seal provision of California Rule of
10 Court 2.551(d). Any affected party or non-party may then file a motion to
11 seal, pursuant to the California Rule of Court 2.551(b), within ten (10)
12 business days after such lodging. Documents lodged pursuant to California
13 Rule of Court 2.551(d) shall bear a legend stating that such materials shall
14 be unsealed upon expiration of ten (10) business days, absent the filing of a
15 motion to seal pursuant to Rule 2.551(b) or Court order.

16 21. In connection with a request to have materials sealed pursuant to Paragraph 12 or
17 Paragraph 13, the requesting party's declaration pursuant to California Rule of Court 2.551(b)(1)
18 shall contain sufficient particularity with respect to the particular Confidential Information or
19 Highly Confidential Information and the basis for sealing to enable the Court to make the findings
20 required by California Rule of Court 2.550(d).

21 **IT IS SO STIPULATED.**

22
23 DATED: _____, 2016

24 **PERKINS COIE LLP**

25 By: _____
26 Julie E. Schwartz

27 *Attorneys for Defendant*
28 *Facebook, Inc.*

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DATED: _____, 2016

BIRNBAUM & GODKIN, LLP

By: _____
David Godkin

Attorneys for Plaintiff
SIX4THREE, LLC

IT IS SO ORDERED.

DATED: 10/24, 2016


JUDGE OF THE SUPERIOR COURT

CERTIFICATION

I hereby certify my understanding that Confidential Information or Highly Confidential Information is being provided to me pursuant to the terms and restrictions of the Stipulation and Protective Order Regarding Confidential Information filed on _____, 2016, in *Six4Three, LLC v. Facebook, Inc.*, San Mateo County Superior Court Case No. CIV533328 ("Order"). I have been given a copy of that Order and read it.

I agree to be bound by the Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I will not reveal the Confidential Information or Highly Confidential Information to anyone, except as allowed by the Order. I will maintain all such Confidential Information or Highly Confidential Information, including copies, notes, or other transcriptions made therefrom, in a secure manner to prevent unauthorized access to it. No later than thirty (30) days after the conclusion of this action, I will return the Confidential Information or Highly Confidential Information, including copies, notes, or other transcriptions made therefrom, to the counsel who provided me with the Confidential Information or Highly Confidential Information. I hereby consent to the jurisdiction of the San Mateo County Superior Court for the purpose of enforcing the Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ located at the address of _____ as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

I declare under penalty of perjury that the foregoing is true and correct and that this certificate is executed this ____ day of _____, 2016, at _____.

By: _____

Address: _____

Phone: _____

EXHIBIT 3

November 19, 2018

VIA EMAIL

David S. Godkin
James Kruzer
BIRNBAUM & GODKIN, LLP
280 Summer Street
Boston, MA 02210
godkin@birnbaumgodkin.com
kruzer@birnbaumgodkin.com

Re: *Six4Three, LLC v. Facebook, Inc.*
Case No. CIV 533328

Dear David:

We are in receipt of your letter dated November 19, 2018 regarding the letter to Mr. Kramer from Mr. Collins, the Chair of the Digital, Culture, Media and Sports Committee (the “DCMS Committee”). Facebook continues to cooperate with the DCMS Committee and has provided extensive information in response to its inquiries over the past several months.

Nevertheless, under the provisions of the Stipulated Protective Order, Six4Three is not permitted to disclose Facebook’s confidential information in response to the DCMS Committee letter.

Under the plain terms of the Stipulated Protective Order, the November 19, 2018 letter from the DCMS Committee is not “a subpoena or a court order issued in other litigation that compels disclosure of any Confidential Information or Highly Confidential Information.” *See* Stipulated Protective Order ¶ 16. As such, Six4Three (let alone Mr. Kramer) is prohibited from disclosing this information pursuant to the DCMS Committee’s request. Facebook will view any production of those documents, or the confidential information they contain, as a violation of the October 2016 protective order entered in the *Six4Three* litigation.

Further, your letter fails to articulate any reason why Mr. Kramer has possession of Facebook’s confidential information. Under the plain terms of the protective order, Mr. Kramer should not have access to Facebook’s Highly Confidential Information, including Six4Three’s unredacted opposition to Facebook’s anti-SLAPP briefing. *See* October 25, 2016 Protective Order at 5 (precluding disclosure of Highly Confidential Information to “individual parties or directors, officers or employees of a party”).

November 19, 2018

Page 2

Accordingly, Mr. Kramer does not have the authority to review many of the documents that the Committee requests, let alone the authority to disclose them.

The facts suggest that Six4Three may have *already* violated the protective order by disclosing portions of the record containing confidential information. The protective order makes clear that “[a]ll Confidential Information or Highly Confidential Information produced or exchanged in the course of this case . . . shall be used by the . . . parties to whom the information is produced *solely for the purpose of this case.*” October 25, 2016 Protective Order ¶ 3.

Facebook reserves its rights to pursue all available remedies for any production by Six4Three of designated Confidential or Highly Confidential Information in violation of the Stipulated Protective Order entered in *Six4Three, LLC v. Facebook, Inc.*, as well as the San Mateo County Superior Court’s November 1, 2018 Order sealing or striking this very material. *See generally* Cal. Civ. Proc. Code § 1209(a).

Although we do not agree that the provisions of Paragraph 16 of the Stipulated Protective Order apply here, to the extent that they do, Facebook intends to seek appropriate relief. Accordingly, Six4Three is required to “cooperate with respect to all reasonable procedures sought to be pursued by” Facebook. Facebook is willing to meet and confer to negotiate a reasonable schedule for the relief it intends to seek.

Please confirm that neither Mr. Kramer nor Six4Three will disclose Facebook’s confidential information in response to the DCMS Committee letter, dated November 19, 2018.

Very truly yours,

A handwritten signature in black ink, appearing to be 'LM' or 'Laura Miller', written in a cursive style.

Laura Miller

EXHIBIT 4



**BIRNBAUM &
GODKIN, LLP**
ATTORNEYS AT LAW

David S. Godkin
Direct Dial: (617) 307-6110
godkin@birnbaumgodkin.com

November 20, 2018

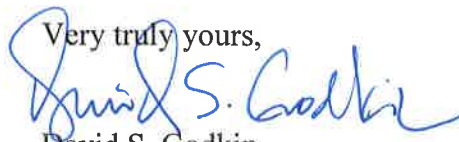
BY EMAIL (damian.collins.mp@parliament.uk)

Mr. Damian Collins MP
Chair, Digital, Culture, Media and Sports Committee
House of Commons
London SW1A 0AA

*Re: Order for Documents Served on Six4Three's Principal, Ted Kramer, on
November 19, 2018*

Dear Mr. Collins:

Following up on my letter sent yesterday regarding this matter, we have been informed by counsel for Defendants that they are seeking appropriate relief from the Superior Court of California, San Mateo County with respect to the Order served yesterday on Mr. Kramer. Insofar as my client is subject to and bound by Protective Order and other orders issued by the California Superior Court, my client is unable to comply with the Order unless and until the Superior Court permits, or unless Defendants consent. Insofar as the documents you seek include internal Facebook records, I suggest that you seek to obtain them directly from Facebook. Facebook's counsel in the California litigation is copied below.

Very truly yours,

David S. Godkin


DSG:cam

cc: Ms. Chloe Challender (By email to challengerc@parliament.uk)
Culture, Media & Sport Committee (By email to CMSCOM@parliament.uk)
Joshua Lerner, Esq. (By email)
Sonal Mehta, Esq. (By email)
Catherine Kim, Esq. (By email)
Service-Six4Three (By email)
Stuart G. Gross, Esq. (By email)
James E. Kruzer, Esq. (By email)

EXHIBIT 5

FILED
SAN MATEO COUNTY

NOV 20 2018

Clerk of the Superior Court
By  **DEPUTY CLERK**

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN MATEO

SIX4THREE LLC,

Plaintiff,

vs.

FACEBOOK INC., et al.

Defendants.

Case No. CIV533328

**ORDER FOR BRIEFING AND STAYING
SUBMISSION OF UNREDACTED
COPIES OF SEALED DOCUMENTS**

Assigned for All Purposes to
Hon. V. Raymond Swope, Dept. 23

Dept.: 23

Action Filed: April 10, 2015

On October 25, 2016, the Court issued a Protective Order pursuant to the stipulation of the parties. Non-party Theodore Kramer is the creator and certified representative of plaintiff SIX4THREE, LLC ("Plaintiff" or "Six4Three") and is therefore bound by the Protective Order. (See Stip. & Prot. Order, issued Oct. 25, 2016, ¶ 4(c).)

Pursuant to CRC Rules 2.550 and 2.551, the Court has granted, in part, and denied, in full or in part, several motions to seal and unseal related to evidence proffered in relation to defendant FACEBOOK, INC.'s ("Defendant" or "Facebook") Special Motion to Strike, filed November 21, 2017, and defendants MARK ZUCKERBERG, CHRISTOPHER COX, JAVIER OLIVAN, SAMUEL LESSIN, MICHAEL VERNAL, and ILYA SUKHAR's (collectively "Individual Defendants") Special Motion to Strike, filed May 3, 2018. (See Am. Order, issued Nov. 1, 2018; Order, issued Nov. 19, 2018.) The Court has ordered stricken certain evidence proffered by Plaintiff.

///

///

1 On November 19, 2018 at 8:12 p.m., the Court received an email from Defendant addressed
2 to both the Court and Plaintiff's counsel pertaining to correspondence Defendant received from
3 Plaintiff. Defendant's email and attachment are attached as **Exhibit 1** to this Order. Plaintiff attached
4 a letter dated and received November 19, 2018 from the United Kingdom, House of Commons,
5 Digital, Culture, Media and Sport Committee ("DCMS") requesting Theodore Kramer to submit the
6 "[u]nredacted copies of Six4Three's opposition to the anti-SLAPP . . . motion" and "requir[ing] the
7 documents by 5 pm [GMT] on Tuesday 20th November 2018" or 9 a.m. PST. (Ex. 1, Pl. Letter, Ex.
8 A, p. 1.)

9 On November 20, 2018 at 7:34 a.m., the Court acknowledged receipt of Defendant's email
10 and instructed the parties that no documents are to be transmitted or released until further order of
11 this Court.

12 On November 20, 2018 at 8:15 a.m., the Court received an email from Plaintiff addressed to
13 both the Court and Defendants' counsel pertaining to further correspondence between Plaintiff's
14 counsel and DCMS. Plaintiff's email and attachments are attached as **Exhibit 2** to this Order. In its
15 response to Plaintiff, DCMS sought "specific clarification as to whether you consider that the
16 California order has extra-territorial effect, given that Mr. Kramer and the documents are both in
17 the UK at present?"

18 IT IS HEREBY ORDERED as follows:

19 1. No unredacted copies of Plaintiff's opposition to either Facebook's Special Motion to
20 Strike or Individual Defendants' Special Motion to Strike shall be transmitted, released or submitted,
21 until further order of the Court. Failure to comply will be considered an act of contempt.

22 2. The Court orders briefing on this issue. Plaintiff shall file and electronically serve its brief
23 and supporting evidence no later than Monday, November 26, 2018 at 12 p.m. Defendant shall file
24 and electronically serve its brief and supporting evidence no later than 11:59:59 p.m. on Wednesday,
25 November 28, 2018. Each brief shall be no more than 20 pages in length.

26 3. Both briefs shall address:

27 a. What authority does DCMS have to overrule the Court's orders without first
28 seeking relief from the Court?

- b. What is the legal effect, under both United States and United Kingdom law, of the DCMS letter to Mr. Kramer?
- c. Is the DCMS letter different than a summons?
- d. What issues under the United States Constitution are raised by the DCMS letter?
- e. What are the obligations of the Court where a House of Commons committee orders the release of documents in contravention to the Court's orders?
- f. What are the procedures for Mr. Kramer, who is visiting the United Kingdom on business, to respond or object to the DCMS letter demand? (See Ex. 1.)
- g. What are the contempt procedures for DCMS for non-compliance by Mr. Kramer?

4. In addition, Plaintiff's brief and supporting evidence shall address:

- a. What events or circumstances have given rise to the letter dated November 19, 2018 from DCMS to Mr. Kramer?
- b. What communications has Plaintiff, its counsel, Mr. Kramer, or its other agents or representatives had with DCMS or any member of Parliament, including staff, prior to issuance of the letter?
- c. How was DCMS made aware "that Mr. Kramer and the documents are both in the UK at the present"? (See Ex. 2.)
- d. What method was employed to serve the DCMS letter on Mr. Kramer?
- e. Is Mr. Godkin licensed to practice in the United Kingdom and does he have authority to represent Mr. Kramer before DCMS? (See Ex. 2.)
- f. Has Mr. Kramer retained counsel in the United Kingdom at any point? If so, identify that counsel.

5. In addition, Defendant's brief and supporting evidence shall address all of the following:

- a. Defendant has offices in London. Is Defendant subject to the jurisdiction of DCMS?
- b. Has DCMS or other committee served a similar demand for unredacted copies of sealed documents on Defendant? If so, how has Defendant responded?

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- 6. Any factual assertions shall be supported by competent evidence.
- 7. Courtesy copies are to be delivered to Department 23 within one day of filing.

IT IS SO ORDERED.

DATED: November 20, 2018

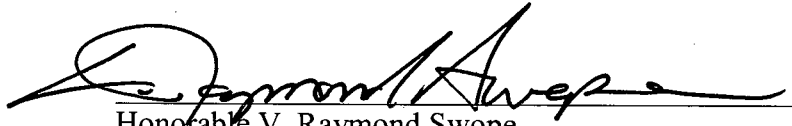

Honorable V. Raymond Swope
Judge of the Superior Court

Exhibit 1

From: Laura Miller <LMiller@durietangri.com>
Sent: Monday, November 19, 2018 8:12 PM
To: ComplexCivil; Rebecca Huerta
Cc: SERVICE-SIX4THREE; David Godkin; James Kruzer; Stuart Gross
Subject: Six4Three v. Facebook (CIV533328)
Attachments: 2018-11-19 Godkin letter to DT re Order from Parliament.pdf

Ms. Huerta,

I write with an urgent request for an ex parte hearing regarding Six4Three's imminent violation of the protective order. This is in addition but related to Facebook's request for an ex parte from earlier today.

Six4Three's counsel sent us the attached letter this morning at 11:33 a.m., purporting to put Facebook on notice that Six4Three is planning to provide to the Digital, Culture, Media and Sport Committee (the "DCMS Committee") of the UK House of Parliament:

Unredacted copies of Six4Three's opposition to the anti-SLAPP (strategic lawsuits against public participation) motion, filed in the California courts, relating to the company's dispute with Facebook, along with any documents or notes relating to Six4Three's opposition to the anti-SLAPP motion.

This is precisely the information that the Court ordered sealed and/or struck in its Order of November 1, 2018. And as the DCMS Committee's letter is neither a subpoena nor a court order in related litigation, Six4Three has no basis to disclose Facebook's confidential information under the Stipulated Protective Order.

We have informed Six4Three of Facebook's position and asked them not to disclose Facebook's confidential information, under both to the Stipulated Protective Order and this Court's Order of November 1, 2018. Six4Three has not provided a response, and may disclose Facebook's confidential information as early as **9 a.m. pacific tomorrow**.

Understanding the extraordinary nature of its request, Facebook asks the Court to schedule an ex parte teleconference on this matter as soon as possible. In the event that Six4Three agrees to delay any disclosure until the Court has had an opportunity to address this matter, Facebook requests that this matter proceed along the same briefing schedule as set forth in the Court's email of 3:25 p.m. today regarding Facebook's ex parte application for expedited briefing on a motion for sanctions and contempt related to other violations of the Protective Order.

Best regards,

Laura Miller | Attorney | Durie Tangri LLP | 415-362-6666 | lmiller@durietangri.com

November 19, 2018

BY EMAIL

Sonal Mehta, Esq.
Joshua Lerner, Esq.
Laura Miller, Esq.
Durie Tangri
217 Leidesdorff Street
San Francisco, CA 94111

Re: Six4Three, LLC v. Facebook, Inc., et al.
California Superior Court, San Mateo
Case No. Civ 533328

Dear Counsel:

Please be advised that my client's principal, Ted Kramer, received this morning, November 19th, 2018, an Order for Documents ("Order," attached hereto as Exhibit A) from the Parliament of the United Kingdom to compel the production of certain documents in our possession, including:

Unredacted copies of Six4Three's opposition to the anti-SLAPP (strategic lawsuits against public participation) motion, filed in the California courts, relating to the company's dispute with Facebook, along with any documents or notes relating Six4Three's opposition to the anti-SLAPP motion.

Order, at 1. The Order further requires Mr. Kramer to comply no later than 5pm local time on Tuesday, November 20th, 2018 or he may be held in contempt and could face investigation and sanction by Parliament. Mr. Kramer is currently located in the United Kingdom for business meetings this week and is therefore subject to the jurisdiction of Parliament.

Pursuant to the Protective Order entered October 25, 2016 ("Protective Order," attached hereto as Exhibit B), this letter serves as prompt (immediate) notice of the Order as required under Section 16(a) and of 643's intent to cooperate with respect to all reasonable and timely relief Facebook may seek in Parliament, pursuant to Section 16(c).

Further, for avoidance of doubt, please note the procedure available to Defendants under the Protective Order:

Sonal Mehta, Esq.
Joshua Lerner, Esq.
Laura Miller, Esq.
November 19, 2018
Page 2



If the designating party timely seeks a protective order, the party served with the subpoena or court order shall not produce any Confidential Information or Highly Confidential Information before a determination by the court from which the subpoena or order *issued*, unless the party has obtained the designating party's permission. The designating party shall bear the burden and expense of seeking protection in that court of its confidential material—and nothing in these provisions should be construed as authorizing or encouraging a receiving party in this action to disobey a lawful directive from another court.

Protective Order, Section 16. Thus, if Facebook intends to seek relief in the Parliament of the United Kingdom, which is the entity “from which the subpoena or order issued,” we request that you please do so prior to the deadline imposed by the Order.

Very truly yours,

A handwritten signature in black ink, appearing to read 'David S. Godkin', written over the typed name.

David S. Godkin

DSG:cam

Attachments

Cc: Catherine Kim, Esq. (By email)
Service-Six4Three (By email)
Stuart G. Gross, Esq. (By email)
James E. Kruzer, Esq. (By email)

EXHIBIT A



Digital, Culture, Media and Sport Committee

House of Commons, London SW1A 0AA

Tel 020 7219 6120 Email cmscom@parliament.uk Website www.parliament.uk/cms

Mr Theodore Kramer
London Marriott Hotel County Hall
Westminster Bridge Rd
London SE1 7PB

19th November 2018

Dear Mr Kramer,

Order for documents

The Digital, Culture, Media and Sport Committee has been given the power by the House of Commons under Standing Order No. 152(4) "to send for persons, papers and records". This includes the power to compel the production of papers by people within UK jurisdiction.

On Monday 19 November, the Committee made the following order (which will be published in its formal minutes in due course):

Ordered, That Mr Theodore Kramer submit the following documents to the DCMS Committee in relation to its inquiry into Disinformation and 'fake news', by 5pm on 20th November 2018:

Unredacted copies of Six4Three's opposition to the anti-SLAPP (strategic lawsuits against public participation) motion, filed in the California courts, relating to the company's dispute with Facebook, along with any documents or notes relating Six4Three's opposition to the anti-SLAPP motion.

We are requesting these documents because we believe that they contain information that is highly relevant to our ongoing investigation into disinformation and fake news. In particular, we are interested to know whether they can provide further insights to the committee about what senior executives at Facebook knew about concerns relating to Facebook users' data privacy, and developers' access to user data. The Committee's request is made for these reasons, and in no way suggests any support for the position of your organisation in its dispute with Facebook.

As noted in Erskine May's *Parliamentary Practice*: "there is no restriction on the power of committees to require the production of papers by private bodies or individuals provided that such papers are relevant to the committee's work as defined by its order of reference. [...] Solicitors have been ordered to produce papers relating to a client" (Erskine May, *Parliamentary Practice*, 24th edition, 2011, p.819.)

As Erskine May also notes: "Individuals have been held in contempt who [...] have disobeyed or frustrated committee orders for the production of papers" (p.839). Should you fail to comply with the order of the Committee and were found to be in contempt, you could face investigation and sanction by the House.

We require the documents by 5pm on Tuesday 20th November 2018. I look forward to your compliance with this Order.

Yours sincerely,

DAMIAN COLLINS MP

CHAIR, DIGITAL, CULTURE, MEDIA AND SPORT COMMITTEE



Digital, Culture, Media and Sport Committee

House of Commons, London SW1A 0AA

Tel 020 7219 6120 Email cmscom@parliament.uk Website www.parliament.uk/cms

19 November 2018

Extract from formal minutes of the Committee of 19 November 2018:

Ordered, That Mr Theodore Kramer submit the following documents to the DCMS Committee in relation to its inquiry into Disinformation and 'fake news', by 5pm on 20th November 2018:

Unredacted copies of Six4Three's opposition to the anti-SLAPP (strategic lawsuits against public participation) motion, filed in the California courts, relating to the company's dispute with Facebook, along with any documents or notes relating Six4Three's opposition to the anti-SLAPP motion.

DAMIAN COLLINS MP

CHAIR, DCMS COMMITTEE

EXHIBIT B

1 Julie E. Schwartz, Bar No. 260624
2 JSchwartz@perkinscoie.com
3 PERKINS COIE LLP
4 3150 Porter Drive
5 Palo Alto, CA 94304-1212
6 Telephone: 650.838.4300
7 Facsimile: 650.838.4350

8 James R. McCullagh, admitted *pro hac vice*
9 JMcCullagh@perkinscoie.com
10 PERKINS COIE LLP
11 1201 Third Avenue, Suite 4900
12 Seattle, WA 98101-3099
13 Telephone: 206.359.8000
14 Facsimile: 206.359.9000

15 Attorneys for Defendant
16 Facebook, Inc.

FILED
SAN MATEO COUNTY

OCT 25 2016

Clerk of the Superior Court

By

DEPUTY CLERK

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN MATEO

14 SIX4THREE, LLC, a Delaware limited
15 liability company,

16 Plaintiff,

17 v.

18 FACEBOOK, INC., a Delaware
19 corporation and DOES 1-50, inclusive,

20 Defendant.

Case No. CIV533328

**STIPULATED [PROPOSED]
PROTECTIVE ORDER**

21 In order to protect confidential information obtained by the parties in connection with this
22 case, the parties, by and through their respective undersigned counsel and subject to the approval
23 of the Court, hereby agree as follows:

24 **Part One: Use Of Confidential Materials In Discovery**

25 1. Any party or non-party may designate as Confidential Information (by stamping
26 the relevant page or as otherwise set forth herein) any document or response to discovery which
27 that party or non-party considers in good faith to contain information involving trade secrets, or

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STIPULATED [PROPOSED] PROTECTIVE ORDER
CASE NO. CIV533328

1 confidential business, financial, or personal information, including personal financial information
2 about any individual or entity; information regarding any individual's or entity's banking
3 relationship with any banking institution, including information regarding financial transactions
4 or financial accounts, and any information regarding any individual or entity that is not otherwise
5 available to the public, subject to protection under Rules 2.550, 2.551, 2.580, 2.585, 8.160, and
6 8.490 of the California Rules of Court or under other provisions of California law. Any party or
7 non-party may designate as Highly Confidential Information (by stamping the relevant page or as
8 otherwise set forth herein) any document or response to discovery which that party or non-party
9 considers in good faith to contain information involving highly sensitive trade secrets or
10 confidential business, financial, or personal information, the disclosure of which would result in
11 the disclosure of trade secrets or other highly sensitive research, development, production,
12 personnel, commercial, market, financial, or business information, or highly sensitive personal
13 information, subject to protection under Rules 2.550, 2.551, 2.580, 2.585, 8.160, and 8.490 of the
14 California Rules of Court or under other provisions of California law. Where a document or
15 response consists of more than one page, the first page and each page on which confidential
16 information appears shall be so designated.

17 2. A party or non-party may designate information disclosed during a deposition or in
18 response to written discovery as Confidential Information or Highly Confidential Information by
19 so indicating in said responses or on the record at the deposition and requesting the preparation of
20 a separate transcript of such material. In addition, a party or non-party may designate in writing,
21 within thirty (30) days after receipt of said responses or of the deposition transcript for which the
22 designation is proposed, that specific pages of the transcript and/or specific responses be treated
23 as Confidential Information or Highly Confidential Information. Any other party may object to
24 such proposal, in writing or on the record. Upon such objection, the parties shall follow the
25 procedures described in Paragraph 9 below. Until the thirty (30) day period for designation has
26 lapsed, the entirety of each deposition transcript shall be treated as Confidential Information.
27 After the thirty (30) day period for designation has lapsed, any documents or information
28 designated pursuant to the procedure set forth in this paragraph shall be treated according to the

1 designation until the matter is resolved according to the procedures described in Paragraph 9
2 below, and counsel for all parties shall be responsible for marking all previously unmarked copies
3 of the designated material in their possession or control with the specified designation. A party
4 that makes original documents or materials available for inspection need not designate them as
5 Confidential Information or Highly Confidential Information until after the inspecting party has
6 indicated which materials it would like copied and produced. During the inspection and before the
7 designation and copying, all of the material made available for inspection shall be considered
8 Highly Confidential Information.

9 3. All Confidential Information or Highly Confidential Information produced or
10 exchanged in the course of this case (not including information that is publicly available) shall be
11 used by the party or parties to whom the information is produced solely for the purpose of this
12 case. Confidential Information or Highly Confidential Information shall not be used for any
13 commercial competitive, personal, or other purpose. Confidential Information or Highly
14 Confidential Information must be stored and maintained by a receiving party at a location and in a
15 secure manner that ensures that access is limited to the persons authorized under this Stipulated
16 Protective Order. The protections conferred by this Stipulated Protective Order cover not only
17 the Confidential Information or Highly Confidential Information produced or exchanged in this
18 case, but also (1) any information copied or extracted from or reflecting the Confidential
19 Information or Highly Confidential Information; (2) all copies, excerpts, summaries, or
20 compilations of Confidential Information or Highly Confidential Information; and (3) any
21 testimony, conversations, or presentations by parties or their counsel that might reveal
22 Confidential Information or Highly Confidential Information. However, the protections
23 conferred by this Stipulated Protective Order do not cover the following information: (a) any
24 information that is in the public domain at the time of disclosure to a receiving party or becomes
25 part of the public domain after its disclosure to a receiving party as a result of publication not
26 involving a violation of this Stipulated Protective Order, including becoming part of the public
27 record through trial or otherwise; and (b) any information known to the receiving party prior to
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1 the disclosure or obtained by the receiving party after the disclosure from a source who obtained
2 the information lawfully and under no obligation of confidentiality to the designating party.

3 4. Except with the prior written consent of the other parties, or upon prior order of
4 this Court obtained upon notice to opposing counsel, Confidential Information shall not be
5 disclosed to any person other than:

- 6 (a) counsel for the respective parties to this litigation, including in-house
7 counsel and co-counsel retained for this litigation;
- 8 (b) employees of such counsel;
- 9 (c) individual parties or officers or employees of a party, to the extent deemed
10 necessary by counsel for the prosecution or defense of this litigation;
- 11 (d) consultants or expert witnesses retained for the prosecution or defense of
12 this litigation, provided that each such person shall execute a copy of the
13 Certification annexed to this Order (which shall be retained by counsel to
14 the party so disclosing the Confidential Information and made available
15 for inspection by opposing counsel during the pendency or after the
16 termination of the action only upon good cause shown and upon order of
17 the Court) before being shown or given any Confidential Information, and
18 provided that if the party chooses a consultant or expert employed by the
19 opposing party or one of its competitors, the party shall notify the
20 opposing party, or designating non-party, before disclosing any
21 Confidential Information to that individual and shall give the opposing
22 party an opportunity to move for a protective order preventing or limiting
23 such disclosure;
- 24 (e) any authors or recipients of the Confidential Information or a custodian;
- 25 (f) the Court, court personnel, and court reporters; and
- 26 (g) witnesses (other than persons described in Paragraph 4(e)). A witness shall
27 sign the Certification before being shown a confidential document.
28 Confidential Information may be disclosed to a witness who will not sign

1 the Certification only in a deposition at which the party who designated
2 the Confidential Information is represented or has been given notice that
3 Confidential Information produced by the party may be used. At the
4 request of any party, the portion of the deposition transcript involving the
5 Confidential Information shall be designated "Confidential" pursuant to
6 Paragraph 2 above. Witnesses shown Confidential Information shall not be
7 allowed to retain copies.

8 5. Except with the prior written consent of the other parties, or upon prior order of
9 this Court obtained after notice to opposing counsel, Highly Confidential Information shall be
10 treated in the same manner as Confidential Information pursuant to Paragraph 4 above, except
11 that it shall not be disclosed to individual parties or directors, officers or employees of a party, or
12 to witnesses (other than persons described in Paragraph 4(a) or 4(e)).

13 6. Any persons receiving Confidential Information or Highly Confidential
14 Information shall not reveal or discuss such information to or with any person who is not entitled
15 to receive such information, except as set forth herein. If a party or any of its representatives,
16 including counsel, inadvertently discloses any Confidential Information or Highly Confidential
17 Information to persons who are not authorized to use or possess such material, the party shall
18 provide immediate written notice of the disclosure to the party whose material was inadvertently
19 disclosed. If a party has actual knowledge that Confidential Information or Highly Confidential
20 Information is being used or possessed by a person not authorized to use or possess that material,
21 regardless of how the material was disclosed or obtained by such person, the party shall provide
22 immediate written notice of the unauthorized use or possession to the party whose material is
23 being used or possessed. No party shall have an affirmative obligation to inform itself regarding
24 such possible use or possession.

25 7. In connection with discovery proceedings as to which a party submits Confidential
26 Information or Highly Confidential Information, all documents and chamber copies containing
27 Confidential Information or Highly Confidential Information which are submitted to the Court
28 shall be filed with the Court in sealed envelopes or other appropriate sealed containers. On the

1 outside of the envelopes, a copy of the first page of the document shall be attached. If
2 Confidential Information or Highly Confidential Information is included in the first page attached
3 to the outside of the envelopes, it may be deleted from the outside copy. The word
4 "CONFIDENTIAL" shall be stamped on the envelope and a statement substantially in the
5 following form shall also be printed on the envelope:

6 "This envelope is sealed pursuant to Order of the Court, contains Confidential
7 Information and is not to be opened or the contents revealed, except by Order of the
8 Court or agreement by the parties."

9 8. A party may designate as Confidential Information or Highly Confidential
10 Information documents or discovery materials produced by a non-party by providing written
11 notice to all parties of the relevant document numbers or other identification within thirty (30)
12 days after receiving such documents or discovery materials. Until the thirty (30) day period for
13 designation has lapsed, any documents or discovery materials produced by a non-party shall be
14 treated at Confidential Information. Any party or non-party may voluntarily disclose to others
15 without restriction any information designated by that party or nonparty as Confidential
16 Information or Highly Confidential Information, although a document may lose its confidential
17 status if it is made public. If a party produces materials designated Confidential Information or
18 Highly Confidential Information in compliance with this Order, that production shall be deemed
19 to have been made consistent with any confidentiality or privacy requirements mandated by local,
20 state or federal laws.

21 9. If a party contends that any material is not entitled to confidential treatment, such
22 party may at any time give written notice to the party or non-party who designated the material.
23 The party or non-party who designated the material shall have twenty (20) days from the receipt
24 of such written notice to apply to the Court for an order designating the material as confidential.
25 The party or non-party seeking the order has the burden of establishing that the document is
26 entitled to protection.
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1 10. Notwithstanding any challenge to the designation of material as Confidential
2 Information or Highly Confidential Information, all documents shall be treated as such and shall
3 be subject to the provisions hereof unless and until one of the following occurs:

- 4 (a) the party or non-party who claims that the material is Confidential
5 Information or Highly Confidential Information withdraws such
6 designation in writing; or
7 (b) the party or non-party who claims that the material is Confidential
8 Information or Highly Confidential Information fails to apply to the Court
9 for an order designating the material confidential within the time period
10 specified above after receipt of a written challenge to such designation; or
11 (c) the Court rules the material is not Confidential Information or Highly
12 Confidential Information.

13 11. All provisions of this Order restricting the communication or use of Confidential
14 Information or Highly Confidential Information shall continue to be binding after the conclusion
15 of this action, unless otherwise agreed or ordered. Upon conclusion of the litigation, a party in the
16 possession of Confidential Information or Highly Confidential Information shall within sixty (60)
17 days either (a) return such documents to counsel for the party or non-party who provided such
18 information, or (b) destroy such documents. Whether the Confidential Information or Highly
19 Confidential Information is returned or destroyed, the receiving party must submit a written
20 certification to the producing party (and, if not the same person or entity, to the designating party)
21 by the 60 day deadline that (1) all the Confidential Information or Highly Confidential
22 Information that was returned or destroyed, and (2) affirms that the receiving party has not
23 retained any copies, abstracts, compilations, summaries or any other format reproducing or
24 capturing any of the Confidential Information or Highly Confidential Information.
25 Notwithstanding this provision, counsel are entitled to retain an archival copy of all pleadings,
26 motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence,
27 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert
28 work product, even if such materials contain Confidential Information or Highly Confidential

1 Information. Any such archival copies that contain or constitute Confidential Information or
2 Highly Confidential Information remain subject to this Stipulated Protective Order. The
3 conclusion of the litigation shall be deemed to be the later of (1) dismissal of all claims and
4 defenses in this action, with or without prejudice; and (2) final judgment herein after the
5 completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
6 including the time limits for filing any motions or applications for extension of time pursuant to
7 applicable law. After the conclusion of this action, this Court will retain jurisdiction to enforce
8 the terms of this Order.

9 12. Nothing herein shall be deemed to waive any applicable privilege or work product
10 protection, or to affect the ability of a party to seek relief for an inadvertent disclosure of material
11 protected by privilege or work product protection. Any witness or other person, firm or entity
12 from which discovery is sought may be informed of and may obtain the protection of this Order
13 by written advice to the parties' respective counsel or by oral advice at the time of any deposition
14 or similar proceeding.

15 13. In the event that any Confidential Information or Highly Confidential Information
16 is inadvertently produced without such designation, the party or non-party that inadvertently
17 produced the information without designation shall give written notice of such inadvertent
18 production promptly after the party or non-party discovers the inadvertent failure to designate
19 (but no later than fourteen (14) calendar days after the party or non-party discovers the
20 inadvertent failure to designate), together with a further copy of the subject information
21 designated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" (the "Inadvertent Production
22 Notice"). Upon receipt of such Inadvertent Production Notice, the party that received the
23 information that was inadvertently produced without designation shall promptly destroy the
24 inadvertently produced information and all copies thereof, or, at the expense of the producing
25 party or non-party, return such together with all copies of such information to counsel for the
26 producing party and shall retain only the newly-produced versions of that information that are
27 designated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL." This provision is not
28 intended to apply to any inadvertent production of any information or materials protected by

1 attorney-client or work product privileges, which inadvertent production is governed by Section
2 14 below.

3 14. In the event that any party or non-party inadvertently produces information that is
4 privileged or otherwise protected from disclosure during the discovery process ("Inadvertent
5 Production Material"), the following shall apply:

6 (a) Such inadvertent production or disclosure shall in no way prejudice or
7 otherwise constitute a waiver of, or estoppel as to, any claim of attorney-client privilege, attorney
8 work product protection, or other applicable protection in this case or any other federal or state
9 proceeding, provided that the producing party shall notify the receiving party in writing of such
10 protection or privilege promptly after the producing party discovers such materials have been
11 inadvertently produced.

12 (b) If a claim of inadvertent production is made, pursuant to this Stipulated
13 Protective Order, with respect to discovery material then in the custody of another party, that
14 party shall: (i) refrain from any further examination or disclosure of the claimed Inadvertent
15 Production Material; (ii) promptly make a good-faith effort to return the claimed Inadvertent
16 Production Material and all copies thereof (including summaries and excerpts) to counsel for the
17 producing party, or destroy all such claimed Inadvertent Production Material (including
18 summaries and excerpts) and certify in writing to that fact; and (iii) not disclose or use the
19 claimed Inadvertent Production Material for any purpose until further order of the Court expressly
20 authorizing such use.

21 (c) A party may move the Court for an order compelling production of the
22 Inadvertent Production Material on the ground that it is not, in fact, privileged or protected. The
23 motion shall be filed under seal and shall not assert as a ground for entering such an order the fact
24 or circumstance of the inadvertent production. The producing party retains the burden of
25 establishing the privileged or protected nature of any inadvertently disclosed or produced
26 information. While such a motion is pending, the Inadvertent Production Material at issue shall
27 be treated in accordance with Paragraph 14(b) above.

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1 (d) If a party, in reviewing discovery material it has received from any other
2 party or any non-party, finds anything the reviewing party believes in good faith may be
3 Inadvertent Production Material, the reviewing party shall: (i) refrain from any further
4 examination or disclosure of the potentially Inadvertent Production Material; (ii) promptly
5 identify the material in question to the producing party (by document number or other equally
6 precise description); and (iii) give the producing party seven (7) days to respond as to whether the
7 producing party will make a claim of inadvertent production. If the producing party makes such a
8 claim, the provisions of Paragraphs 14(a)-(c) above shall apply.

9 15. The parties agree that should the production of source code become necessary,
10 they will need to amend or supplement the terms of this Order. To the extent production of
11 source code becomes necessary in this case, the parties will work expeditiously to propose
12 amendments to this Order to cover any production of source code.

13 16. If a party is served with a subpoena or a court order issued in other litigation that
14 compels disclosure of any Confidential Information or Highly Confidential Information, the
15 receiving party must:

16 (a) promptly notify in writing the designating party. Such notification shall
17 include a copy of the subpoena or court order;

18 (b) promptly notify in writing the party who caused the subpoena or order to
19 issue in the other litigation that some or all of the material covered by the subpoena or order is
20 subject to this Stipulated Protective Order. Such notification shall include a copy of this
21 Stipulated Protective Order; and

22 (c) cooperate with respect to all reasonable procedures sought to be pursued by
23 the designating party whose Confidential Information or Highly Confidential Information may be
24 affected.

25 If the designating party timely seeks a protective order, the party served with the subpoena
26 or court order shall not produce any Confidential Information or Highly Confidential Information
27 before a determination by the court from which the subpoena or order issued, unless the party has
28 obtained the designating party's permission. The designating party shall bear the burden and

1 expense of seeking protection in that court of its confidential material—and nothing in these
2 provisions should be construed as authorizing or encouraging a receiving party in this action to
3 disobey a lawful directive from another court.

4 17. The following additional terms apply to non-party discovery material:

5 (a) The terms of this Order are applicable to information produced by a non-
6 party in this action and designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL.”
7 Such information produced by non-parties in connection with this litigation is protected by the
8 remedies and relief provided by this Order. Nothing in these provisions should be construed as
9 prohibiting a non-party from seeking additional protections.

10 (b) In the event that a party is required, by a valid discovery request, to
11 produce a non-party’s confidential information in its possession, and the party is subject to an
12 agreement with the non-party not to produce the non-party’s confidential information, then the
13 party shall:

14 i. promptly notify in writing the requesting party and the non-party
15 that some or all of the information requested is subject to a confidentiality agreement with a non-
16 party;

17 ii. promptly provide the non-party with a copy of the Stipulated
18 Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific
19 description of the information requested; and

20 iii. make the information requested available for inspection by the non-
21 party.

22 (c) If the non-party fails to object or seek a protective order from this Court
23 within 28 days of receiving the notice and accompanying information, the receiving party may
24 produce the non-party’s confidential information responsive to the discovery request. If the non-
25 party timely seeks a protective order, the receiving party shall not produce any information in its
26 possession or control that is subject to the confidentiality agreement with the non-party before a
27 determination by the Court. Absent a court order to the contrary, the non-party shall bear the
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1 burden and expense of seeking protection in this Court of its Confidential Information or Highly
2 Confidential Information.

3 18. Nothing in this Stipulated Protective Order shall be construed to preclude any
4 party from asserting in good faith that certain Confidential Information or Highly Confidential
5 Information requires additional protections. The parties shall meet and confer to agree upon the
6 terms of such additional protection. By stipulating to the entry of this Protective Order no party
7 waives any right it otherwise would have to object to disclosing or producing any information or
8 item on any ground not addressed in this Stipulated Protective Order. Similarly, no party waives
9 any right to object on any ground to use in evidence of any of the material covered by this
10 Stipulated Protective Order. Nothing in this Stipulated Protective Order abridges the right of any
11 person to seek its modification by the Court in the future.

12 **Part Two: Use of Confidential Materials in Court**

13 The following provisions govern the treatment of Confidential Information or Highly
14 Confidential Information used at trial or submitted as a basis for adjudication of matters other
15 than discovery motions or proceedings. These provisions are subject to Rules 2.550, 2.551, 2.580,
16 2.585, 8.160, and 8.490 of the California Rules of Court and must be construed in light of those
17 Rules.

18 19. A party that files with the Court, or seeks to use at trial, materials designated as
19 Confidential Information or Highly Confidential Information, and who seeks to have the record
20 containing such information sealed, shall submit to the Court a motion or an application to seal,
21 pursuant to California Rule of Court 2.551.

22 20. A party that files with the Court, or seeks to use at trial, materials designated as
23 Confidential Information or Highly Confidential Information by anyone other than itself, and who
24 does not seek to have the record containing such information sealed, shall comply with either of
25 the following requirements:

- 26 (a) At least ten (10) business days prior to the filing or use of the Confidential
27 Information or Highly Confidential Information, the submitting party shall
28 give notice to all other parties, and to any non-party that designated the

1 materials as Confidential Information or Highly Confidential Information
2 pursuant to this Order, of the submitting party's intention to file or use the
3 Confidential Information or Highly Confidential Information, including
4 specific identification of the Confidential Information or Highly
5 Confidential Information. Any affected party or non-party may then file a
6 motion to seal, pursuant to California Rule of Court 2.551(b); or

7 (b) At the time of filing or desiring to use the Confidential Information or
8 Highly Confidential Information, the submitting party shall submit the
9 materials pursuant to the lodging-under-seal provision of California Rule of
10 Court 2.551(d). Any affected party or non-party may then file a motion to
11 seal, pursuant to the California Rule of Court 2.551(b), within ten (10)
12 business days after such lodging. Documents lodged pursuant to California
13 Rule of Court 2.551(d) shall bear a legend stating that such materials shall
14 be unsealed upon expiration of ten (10) business days, absent the filing of a
15 motion to seal pursuant to Rule 2.551(b) or Court order.

16 21. In connection with a request to have materials sealed pursuant to Paragraph 12 or
17 Paragraph 13, the requesting party's declaration pursuant to California Rule of Court 2.551(b)(1)
18 shall contain sufficient particularity with respect to the particular Confidential Information or
19 Highly Confidential Information and the basis for sealing to enable the Court to make the findings
20 required by California Rule of Court 2.550(d).

21 **IT IS SO STIPULATED.**

22
23 DATED: _____, 2016

PERKINS COIE LLP

25 By: _____
26 Julie E. Schwartz

27 *Attorneys for Defendant*
28 *Facebook, Inc.*

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DATED: _____, 2016

BIRNBAUM & GODKIN, LLP

By: _____
David Godkin

Attorneys for Plaintiff
SIX4THREE, LLC

IT IS SO ORDERED.

DATED: 10/24, 2016



JUDGE OF THE SUPERIOR COURT

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CERTIFICATION

I hereby certify my understanding that Confidential Information or Highly Confidential Information is being provided to me pursuant to the terms and restrictions of the Stipulation and Protective Order Regarding Confidential Information filed on _____, 2016, in *Six4Three, LLC v. Facebook, Inc.*, San Mateo County Superior Court Case No. CIV533328 ("Order"). I have been given a copy of that Order and read it.

I agree to be bound by the Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I will not reveal the Confidential Information or Highly Confidential Information to anyone, except as allowed by the Order. I will maintain all such Confidential Information or Highly Confidential Information, including copies, notes, or other transcriptions made therefrom, in a secure manner to prevent unauthorized access to it. No later than thirty (30) days after the conclusion of this action, I will return the Confidential Information or Highly Confidential Information, including copies, notes, or other transcriptions made therefrom, to the counsel who provided me with the Confidential Information or Highly Confidential Information. I hereby consent to the jurisdiction of the San Mateo County Superior Court for the purpose of enforcing the Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ located at the address of _____ as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

I declare under penalty of perjury that the foregoing is true and correct and that this certificate is executed this ____ day of _____, 2016, at _____.

By: _____

Address: _____

Phone: _____

Exhibit 2

From: David Godkin <godkin@birnbaumgodkin.com>
Sent: Tuesday, November 20, 2018 8:15 AM
To: ComplexCivil; Laura Miller; Rebecca Huerta
Cc: SERVICE-SIX4THREE; James Kruzer; Stuart Gross
Subject: RE: Six4Three v. Facebook (CIV533328)
Attachments: RE: Order for Documents Served on Six4Three's Principal, Ted Kramer, on November 19, 2018; 2018-11-20 Godkin letter to DCMS Committee.pdf

Dear Ms. Huerta,

Please find attached a letter that I sent to the DCMS Committee at 9:39 a.m. EST this morning, and an email I received in response a few minutes later.

Sincerely,

David Godkin

From: ComplexCivil <complexcivil@sanmateocourt.org>
Sent: Tuesday, November 20, 2018 10:34 AM
To: Laura Miller <LMiller@durietangri.com>; ComplexCivil <complexcivil@sanmateocourt.org>; Rebecca Huerta <rhuerta@sanmateocourt.org>
Cc: SERVICE-SIX4THREE <SERVICE-SIX4THREE@durietangri.com>; David Godkin <godkin@birnbaumgodkin.com>; James Kruzer <kruzer@birnbaumgodkin.com>; Stuart Gross <sgross@grosskleinlaw.com>
Subject: RE: Six4Three v. Facebook (CIV533328)
Importance: High

The Court is in receipt and receipt this email and the attached letter proffered of Mr. Godkin and is reviewing it.

No documents shall be transmitted/released until further order of this Court.

From: Laura Miller <LMiller@durietangri.com>
Sent: Monday, November 19, 2018 8:12 PM
To: ComplexCivil <complexcivil@sanmateocourt.org>; Rebecca Huerta <rhuerta@sanmateocourt.org>
Cc: SERVICE-SIX4THREE <SERVICE-SIX4THREE@durietangri.com>; David Godkin <godkin@birnbaumgodkin.com>; James Kruzer <kruzer@birnbaumgodkin.com>; Stuart Gross <sgross@grosskleinlaw.com>
Subject: Six4Three v. Facebook (CIV533328)

Ms. Huerta,

I write with an urgent request for an ex parte hearing regarding Six4Three's imminent violation of the protective order. This is in addition but related to Facebook's request for an ex parte from earlier today.

Six4Three's counsel sent us the attached letter this morning at 11:33 a.m., purporting to put Facebook on notice that Six4Three is planning to provide to the Digital, Culture, Media and Sport Committee (the "DCMS Committee") of the UK House of Parliament:

Unredacted copies of Six4Three's opposition to the anti-SLAPP (strategic lawsuits against public participation) motion, filed in the California courts, relating to the company's dispute with Facebook, along with any documents or notes relating to Six4Three's opposition to the anti-SLAPP motion.

This is precisely the information that the Court ordered sealed and/or struck in its Order of November 1, 2018. And as the DCMS Committee's letter is neither a subpoena nor a court order in related litigation, Six4Three has no basis to disclose Facebook's confidential information under the Stipulated Protective Order.

We have informed Six4Three of Facebook's position and asked them not to disclose Facebook's confidential information, under both to the Stipulated Protective Order and this Court's Order of November 1, 2018. Six4Three has not provided a response, and may disclose Facebook's confidential information as early as **9 a.m. pacific tomorrow**.

Understanding the extraordinary nature of its request, Facebook asks the Court to schedule an ex parte teleconference on this matter as soon as possible. In the event that Six4Three agrees to delay any disclosure until the Court has had an opportunity to address this matter, Facebook requests that this matter proceed along the same briefing schedule as set forth in the Court's email of 3:25 p.m. today regarding Facebook's ex parte application for expedited briefing on a motion for sanctions and contempt related to other violations of the Protective Order.

Best regards,

Laura Miller | Attorney | Durie Tangri LLP | 415-362-6666 | lmiller@durietangri.com

From: CHALLENGER, Chloe <CHALLENGERC@parliament.uk>
Sent: Tuesday, November 20, 2018 6:55 AM
To: Cheryl McDuffee; David Godkin
Cc: COLLINS, Damian
Subject: RE: Order for Documents Served on Six4Three's Principal, Ted Kramer, on November 19, 2018

Importance: High

Dear Mr Godkin,

On behalf of Damian Collins MP, thank you for your letter.

We would like to seek specific clarification as to whether you consider that the California order has extra-territorial effect, given that Mr Kramer and the documents are both in the UK at present?

Yours sincerely,

Chloe Challenger



Chloe Challenger

Clerk | Digital, Culture, Media and Sport Committee | House of Commons | London SW1A 0AA

Tel: 020 7219 6120 | E-mail: challenderc@parliament.uk

www.parliament.uk/cms | [@CommonsCMS](https://twitter.com/CommonsCMS)

From: Cheryl McDuffee <mcduffee@birnbaumgodkin.com>
Sent: 20 November 2018 14:39
To: COLLINS, Damian <damian.collins.mp@parliament.uk>
Cc: CHALLENGER, Chloe <CHALLENGERC@parliament.uk>; Culture, Media & Sport Committee <CMSCOM@parliament.uk>; jlerner@durietangri.com; SMehta@durietangri.com; Catherine Kim <CKim@durietangri.com>; SERVICE-SIX4THREE <SERVICE-SIX4THREE@durietangri.com>; Stuart Gross <sgross@grosskleinlaw.com>; David Godkin <godkin@birnbaumgodkin.com>; James Kruzer <kruzer@birnbaumgodkin.com>; Ian Atkinson-Young <iatkinsonyoung@grosskleinlaw.com>
Subject: Order for Documents Served on Six4Three's Principal, Ted Kramer, on November 19, 2018

Dear Mr. Collins:

Pursuant to David Godkin's request, please see the attached.

Thank you,

Cheryl A. McDuffee

Secretary to David S. Godkin

UK Parliament Disclaimer: this e-mail is confidential to the intended recipient. If you have received it in error, please notify the sender and delete it from your system. Any unauthorised use, disclosure, or copying is not permitted. This e-mail has been checked for viruses, but no liability is accepted for any damage caused by any virus transmitted by this e-mail. This e-mail address is not secure, is not encrypted and should not be used for sensitive data.



David S. Godkin
Direct Dial: (617) 307-6110
godkin@birnbaumgodkin.com

November 20, 2018

BY EMAIL (damian.collins.mp@parliament.uk)

Mr. Damian Collins MP
Chair, Digital, Culture, Media and Sports Committee
House of Commons
London SW1A 0AA

*Re: Order for Documents Served on Six4Three's Principal, Ted Kramer, on
November 19, 2018*

Dear Mr. Collins:

Following up on my letter sent yesterday regarding this matter, we have been informed by counsel for Defendants that they are seeking appropriate relief from the Superior Court of California, San Mateo County with respect to the Order served yesterday on Mr. Kramer. Insofar as my client is subject to and bound by Protective Order and other orders issued by the California Superior Court, my client is unable to comply with the Order unless and until the Superior Court permits, or unless Defendants consent. Insofar as the documents you seek include internal Facebook records, I suggest that you seek to obtain them directly from Facebook. Facebook's counsel in the California litigation is copied below.

Very truly yours,
A handwritten signature in black ink, appearing to read 'David S. Godkin'.
David S. Godkin

DSG:cam

cc: Ms. Chloe Challender (By email to challenderc@parliament.uk)
Culture, Media & Sport Committee (By email to CMSCOM@parliament.uk)
Joshua Lerner, Esq. (By email)
Sonal Mehta, Esq. (By email)
Catherine Kim, Esq. (By email)
Service-Six4Three (By email)
Stuart G. Gross, Esq. (By email)
James E. Kruzer, Esq. (By email)

EXHIBIT 6

November 21, 2018

BY EMAIL (damian.collins.mp@parliament.uk)Mr. Damian Collins MP
Chair, Digital, Culture, Media and Sports Committee
House of Commons
London SW1A 0AA

*Re: Orders for Documents Served on Six4Three's Principal, Ted Kramer, on
November 19, 2018 and November 21, 2018*

Dear Mr. Collins:

Following up on my letter sent yesterday regarding this matter, I have attached for your information an Order for Briefing and Staying Submission of Unredacted Copies of Sealed Documents entered by the San Mateo Superior Court yesterday evening. As we have previously informed you, Mr. Kramer is bound by the Protective Order and has no choice but to comply with it. In addition, the attached Order further prevents Mr. Kramer from transmitting, releasing or submitting unredacted copies of Plaintiff's opposition to either Facebook's Special Motion to Strike or Individual Defendants' Special Motion to Strike until further order of the Court, and provides that failure to comply will be considered an act of contempt.

Accordingly, the various orders for documents that your committee has served on Mr. Kramer on November 19 and this morning have placed Mr. Kramer in an impossible position. He would subject himself to contempt sanctions in San Mateo Superior Court if he complies with your orders, and you have reported his non-compliance with your Committee's orders to the House of Commons and requested that it take action against him.

Per the attached Order, the San Mateo Superior Court has asked the parties to the Six4Three litigation to brief a number of issues, including what authority your Committee has to overrule the Superior Court's orders without first seeking relief from the Superior Court, what is the legal effect under United Kingdom law of the DCMS letter to Mr. Kramer, is the DCMS letter different from a summons, what are the procedures for Mr. Kramer, who is visiting the United Kingdom on business, to respond or object to the DCMS letter, and what are the contempt procedures for DCMS for non-compliance by Mr. Kramer. Insofar as these are questions of United Kingdom law and concern your committee, Six4Three's attorneys in the United States are not qualified to address them, and Six4Three is not able to engage United Kingdom counsel to assist.



In addition, as I indicated yesterday, the documents you seek include internal Facebook records, and I suggest that you seek to obtain them directly from Facebook. In the attached order, the Superior Court has also asked whether Facebook is subject to the jurisdiction of your committee, whether DCMS or another committee has served a similar demand for unredacted copies of sealed documents on Facebook and if so, how has Facebook responded.

As the answers to the questions raised by the Superior Court implicate your committee, I urge you or someone on your behalf to provide answers to the Superior Court's questions directly to the Superior Court by Monday, November 26, 2018 at 12 p.m. Pacific Time.

Very truly yours,

David S. Godkin

DSG:cam

cc: Ms. Chloe Challender (By email to challenderc@parliament.uk)
Culture, Media & Sport Committee (By email to CMSCOM@parliament.uk)
Joshua Lerner, Esq. (By email)
Sonal Mehta, Esq. (By email)
Catherine Kim, Esq. (By email)
Service-Six4Three (By email)
Stuart G. Gross, Esq. (By email)
James E. Kruzer, Esq. (By email)

EXHIBIT 7



HOUSE OF COMMONS

David S. Godkin, Esq.
Birmbaum Godkin LLP
280 Summer Street
Boston
MA 02210
United States of America

By email only

23 November 2018

Dear Mr Godkin

RE: Orders for documents served by the Digital, Culture, Media and Sport Committee of the House of Commons on 19 and 21 November 2018

We have been instructed to respond to your letter of 21 November 2018 to Damian Collins MP, Chair of the Digital, Culture, Media and Sport Committee, which raises a number of questions of United Kingdom law and Parliamentary procedure. We regret that we are unable to brief the court directly; it would be improper for us to do so as we have no standing in the case and the House of Commons is not within the jurisdiction of the court. However, we address your questions below, in the hope that this letter will be of assistance in preparing Six4Three's brief. We do not address those matters that are clearly questions of US law, or which are matters of fact.

What authority does DCMS have to overrule the Court's orders without first seeking relief from the court?

DCMS is a select committee of the House of Commons, the elected House of the United Kingdom Parliament. The House of Commons has unfettered powers to call for "persons, papers and records" to enable it effectively to exercise its core functions of scrutiny and debate. By the Standing Orders of the House of Commons, that power to call for persons, papers and records is delegated to a number of Select Committees, including the DCMS Committee. *Erskine May*¹ says (p.819), "There is no restriction on the power of committees to require the production of papers by private

¹ Erskine May's Treatise on the Law, Privilege, Proceedings and Usage of Parliament. References are to the 24th edition (2011), ed. Sir Malcolm Jack KCB PhD.

House of Commons Richmond House London SW1A 0AA

T: 020 7219 3776 F: 020 7219 2479 E: salimis@parliament.uk

bodies or individuals, provided that such papers are relevant to the committee's work as defined by its order of reference. [A copy of the terms of reference of the "Fake News" inquiry is annexed to this letter.] Select committees have formally ordered papers to be produced by the chairman of a nationalized industry and a private society. Solicitors have been ordered to produce papers relating to a client."

The Committee made an order within Parliament's own jurisdiction, at a time when Mr Kramer was present within the jurisdiction, for the production of papers that were present in the jurisdiction. It would have been wholly inappropriate for it to make prior application to a court in California, which does not exercise authority over Parliament's exercise of its functions in the United Kingdom.

By self-denying ordinance (the *sub judice* resolution made in 2001 and annexed to its Standing Orders) the House of Commons and its committees do not in general make reference to proceedings that are active in UK courts, but there is nothing as a matter of law to prevent them from doing so, and there is no equivalent resolution or requirement in relation to proceedings of courts outside the United Kingdom.

What is the legal effect, under United Kingdom law, of the DCMS letter to Mr Kramer?

The order contained in the letter to Mr Kramer dated 19 November 2019 imposes an obligation on Mr Kramer to produce the documents referred to in the order. Mr Kramer had previously been asked to provide the material voluntarily, and had refused to do so by reason of the order of the Court in California. Failure to comply with the order of the Committee would have been capable of constituting a contempt of Parliament (as to which, see below).

By virtue of Article IX of the Bill of Rights 1689, which states (in modern spelling) that "freedom of speech in debate and proceedings in Parliament ought not to be impeached or questioned in any court or place outside Parliament", the courts in the United Kingdom have not been able to consider the legal effect of an order by either House of Parliament, and therefore there is no case law on this issue.

Is the DCMS letter different from a summons?

It has an effect similar to that of a summons, but is not a summons as it is not issued by a court but by Parliament. The Committee also has the power to require the attendance of witnesses, in the exercise of its power to call for "persons, papers and records", and sometimes the exercise of that power to require the attendance of a witness in person is referred to as a summons. The Committee did not require the personal attendance of Mr Kramer in this case.

What are the procedures for Mr Kramer to respond or object to the DCMS letter demand?

There is no procedure for an appeal against an order of a committee, or to enable a person who receives an order to respond to it. Once made, it must be complied with. Mr Kramer was placed in a position where he was required to obey the order or risk being found in contempt of Parliament.

What are the contempt procedures for DCMS for non-compliance by Mr Kramer?

If Mr Kramer had failed to produce the documents after being ordered to do so by the Committee, the Committee would have reported that failure to the House of Commons as a matter of potential contempt of Parliament. "Contempt" is not anywhere defined, but *Erskine May* says (p.837), "Acts or omissions which obstruct or impede the work of a committee or any of its members or officers, or which tend, directly or indirectly, to produce such results, may be treated as a contempt of the House and investigated and punished, as appropriate". May lists disobedience to an order of a committee as a contempt of the House (p.839).

The House would then have considered a motion to refer Mr Kramer's case to the Committee of Privileges. If the motion were passed the Committee of Privileges would have considered the matter and would, if it considered it appropriate, have proposed a sanction on Mr Kramer for his contempt. The powers of the House of Commons to punish for contempt are not defined by statute, and have in the past included imprisonment, fines and admonishment either at the bar of the House or in absentia. In modern times the powers have been exercised sparingly.

Yours faithfully

Speaker's Counsel

Speaker's Counsel

Annex

Terms of reference of the DCMS Committee inquiry into 'fake news'

The Culture, Media and Sport Committee [since 2017, the Digital, Culture, Media and Sport Committee] are looking at ways to respond to the phenomenon of fake news, focusing in particular on the following questions:

- What is 'fake news'? Where does biased but legitimate commentary shade into propaganda and lies?
- What impact has fake news on public understanding of the world, and also on the public response to traditional journalism? If all views are equally valid, does objectivity and balance lose all value?
- Is there any difference in the way people of different ages, social backgrounds, genders etc use and respond to fake news?
- Have changes in the selling and placing of advertising encouraged the growth of fake news, for example by making it profitable to use fake news to attract more hits to websites, and thus more income from advertisers?
- What responsibilities do search engines and social media platforms have, particularly those which are accessible to young people? Is it viable to use computer-generated algorithms to root out 'fake news' from genuine reporting?
- How can we educate people in how to assess and use different sources of news?
- Are there differences between the UK and other countries in the degree to which people accept 'fake news', given our tradition of public service broadcasting and newspaper readership?
- How have other governments responded to fake news?

EXHIBIT 8

From: [David Godkin](#)
To: [Laura Miller](#); [SERVICE-SIX4THREE](#); [Sonal N. Mehta - Durie Tangri \(smehta@durietangri.com\)](#); [Josh Lerner](#); [Catherine Kim](#)
Cc: [Stuart Gross](#); [James Kruzer](#)
Subject: DCMS Orders Served on Ted Kramer
Date: Friday, November 23, 2018 6:36:38 PM
Attachments: [2034_001.pdf](#)

Counsel:

I received the attached correspondence from the House of Commons Speaker's Counsel this morning, in response to my letter to Mr. Collins sent on Wednesday. When I sent my letter on Wednesday, it was my understanding that Mr. Kramer would comply with my instructions that he obey the orders of the San Mateo Superior Court and decline to produce anything to the DCMS Committee in response to its orders served on him on November 19 and 21, 2018. I did not communicate further with Mr. Kramer again after instructing him to comply with the Superior Court orders, until this afternoon.

I learned this afternoon that Mr. Kramer did in fact produce certain documents to the United Kingdom Parliament on Wednesday evening, November 21, 2018, after being repeatedly informed by the DCMS Committee over the course of several hours of the consequences of his failure to comply with three DCMS Committee Orders that he was served with on November 19 and 21, 2018. Mr. Kramer is not certain what documents he turned over as he did not review them, but copied a number of files onto a thumb drive that he gave to them. He believes from reviewing the file names that the files included 643's opposition to the individual defendants' anti-Slapp motion and my declaration in support. He does not know whether any exhibits to my declaration were included. Regardless, it appears that the material he provided included information subject to the protective order.

I am about to write to the DCMS Committee to inform again that the materials Mr. Kramer produced are subject to the Protective Order and that the San Mateo Superior Court ordered Mr. Kramer to refrain from producing them to the Committee. I will ask the DCMS to refrain from reviewing the materials, and to return the thumb drive and any copies either to me or to you. I will copy you on my email.

We will provide you with further updates as we obtain additional information, and will inform the Superior Court of these developments with our filing on Monday.

Sincerely,

David Godkin



HOUSE OF COMMONS

David S. Godkin, Esq.
Birmbaum Godkin LLP
280 Summer Street
Boston
MA 02210
United States of America

By email only

23 November 2018

Dear Mr Godkin

RE: Orders for documents served by the Digital, Culture, Media and Sport Committee of the House of Commons on 19 and 21 November 2018

We have been instructed to respond to your letter of 21 November 2018 to Damian Collins MP, Chair of the Digital, Culture, Media and Sport Committee, which raises a number of questions of United Kingdom law and Parliamentary procedure. We regret that we are unable to brief the court directly; it would be improper for us to do so as we have no standing in the case and the House of Commons is not within the jurisdiction of the court. However, we address your questions below, in the hope that this letter will be of assistance in preparing Six4Three's brief. We do not address those matters that are clearly questions of US law, or which are matters of fact.

What authority does DCMS have to overrule the Court's orders without first seeking relief from the court?

DCMS is a select committee of the House of Commons, the elected House of the United Kingdom Parliament. The House of Commons has unfettered powers to call for "persons, papers and records" to enable it effectively to exercise its core functions of scrutiny and debate. By the Standing Orders of the House of Commons, that power to call for persons, papers and records is delegated to a number of Select Committees, including the DCMS Committee. *Erskine May*¹ says (p.819), "There is no restriction on the power of committees to require the production of papers by private

¹ Erskine May's Treatise on the Law, Privilege, Proceedings and Usage of Parliament. References are to the 24th edition (2011), ed. Sir Malcolm Jack KCB PhD.

House of Commons Richmond House London SW1A 0AA

T: 020 7219 3776 F: 020 7219 2479 E: salimis@parliament.uk

bodies or individuals, provided that such papers are relevant to the committee's work as defined by its order of reference. [A copy of the terms of reference of the "Fake News" inquiry is annexed to this letter.] Select committees have formally ordered papers to be produced by the chairman of a nationalized industry and a private society. Solicitors have been ordered to produce papers relating to a client."

The Committee made an order within Parliament's own jurisdiction, at a time when Mr Kramer was present within the jurisdiction, for the production of papers that were present in the jurisdiction. It would have been wholly inappropriate for it to make prior application to a court in California, which does not exercise authority over Parliament's exercise of its functions in the United Kingdom.

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What is the legal effect, under United Kingdom law, of the DCMS letter to Mr Kramer?

The order contained in the letter to Mr Kramer dated 19 November 2019 imposes an obligation on Mr Kramer to produce the documents referred to in the order. Mr Kramer had previously been asked to provide the material voluntarily, and had refused to do so by reason of the order of the Court in California. Failure to comply with the order of the Committee would have been capable of constituting a contempt of Parliament (as to which, see below).

By virtue of Article IX of the Bill of Rights 1689, which states (in modern spelling) that "freedom of speech in debate and proceedings in Parliament ought not to be impeached or questioned in any court or place outside Parliament", the courts in the United Kingdom have not been able to consider the legal effect of an order by either House of Parliament, and therefore there is no case law on this issue.

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What are the procedures for Mr Kramer to respond or object to the DCMS letter demand?

There is no procedure for an appeal against an order of a committee, or to enable a person who receives an order to respond to it. Once made, it must be complied with. Mr Kramer was placed in a position where he was required to obey the order or risk being found in contempt of Parliament.

What are the contempt procedures for DCMS for non-compliance by Mr Kramer?

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The House would then have considered a motion to refer Mr Kramer's case to the Committee of Privileges. If the motion were passed the Committee of Privileges would have considered the matter and would, if it considered it appropriate, have proposed a sanction on Mr Kramer for his contempt. The powers of the House of Commons to punish for contempt are not defined by statute, and have in the past included imprisonment, fines and admonishment either at the bar of the House or in absentia. In modern times the powers have been exercised sparingly.

Yours faithfully

Speaker's Counsel

Speaker's Counsel

Annex

Terms of reference of the DCMS Committee inquiry into 'fake news'

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- What impact has fake news on public understanding of the world, and also on the public response to traditional journalism? If all views are equally valid, does objectivity and balance lose all value?
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- Have changes in the selling and placing of advertising encouraged the growth of fake news, for example by making it profitable to use fake news to attract more hits to websites, and thus more income from advertisers?
- What responsibilities do search engines and social media platforms have, particularly those which are accessible to young people? Is it viable to use computer-generated algorithms to root out 'fake news' from genuine reporting?
- How can we educate people in how to assess and use different sources of news?
- Are there differences between the UK and other countries in the degree to which people accept 'fake news', given our tradition of public service broadcasting and newspaper readership?
- How have other governments responded to fake news?

EXHIBIT 9

Cheryl McDuffee

From: David Godkin <godkin@birnbaumgodkin.com>
Sent: Friday, November 23, 2018 6:45 PM
To: SALIMI, Saira; damian.collins.mp@parliament.uk; challengerc@parliament.uk
Cc: Laura Miller; Sonal Mehta; Josh Lerner; Catherine Kim; SERVICE-SIX4THREE; Stuart Gross
Subject: RE: Order of the DCMS Committee for the production of papers

All,

It came to my attention this afternoon that Mr. Kramer did in fact provide you with certain documents on Wednesday afternoon in response to the DCMS Committee Orders. Mr. Kramer was instructed not to do so because the documents were subject to a Protective Order entered by the San Mateo Superior Court, and because the San Mateo Superior Court had ordered Mr. Kramer to refrain from producing documents and that failure to comply would be in violation of the Superior Court's order.

I have advised Facebook's counsel of these developments so that Facebook can take any action it deems appropriate. In addition, I urge to you refrain from reviewing the materials provided by Mr. Kramer, refrain from providing them to any third parties, and to return all such materials including any copies either to me or to Facebook's counsel (copied herewith).

Very truly yours,

David Godkin

From: SALIMI, Saira <salimis@parliament.uk>
Sent: Friday, November 23, 2018 4:59 AM
To: David Godkin <godkin@birnbaumgodkin.com>
Subject: Order of the DCMS Committee for the production of papers

Dear Mr Godkin

Please see the attached letter in reply to yours of Wednesday to Damian Collins MP.

S A Salimi
Speaker's Counsel
Office of Speaker's Counsel
1st Floor, Richmond House, House of Commons, London, SW1A 0AA

020 7219 3776 (Office)
07801 890 933 (Mobile)
18001 020 7219 3776 (Text relay)

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mail has been checked for viruses, but no liability is accepted for any damage caused by any virus transmitted by this e-mail. This e-mail address is not secure, is not encrypted and should not be used for sensitive data.

EXHIBIT 10

Cheryl McDuffee

From: COLLINS, Damian <damian.collins.mp@parliament.uk>
Sent: Friday, November 23, 2018 7:06 PM
To: David Godkin; SALIMI, Saira; CHALLENGER, Chloe
Cc: Laura Miller; Sonal N. Mehta - Durie Tangri (smehta@durietangri.com); Josh Lerner; Catherine Kim; SERVICE-SIX4THREE; Stuart Gross
Subject: Re: Order of the DCMS Committee for the production of papers

Dear David

Thank you for your email. I can confirm that I have already viewed the contents of these documents, which were provided to the Committee by Six4Three following the Order we served on Mr Kramer whilst he was in London. They are clearly of significant interest to the Committee's inquiry.

The Committee will discuss next week how it intends to proceed.

Kind regards

Damian Collins

Damian Collins
MP for Folkestone and Hythe
Chair of the Digital, Culture, Media and Sport Select Committee

T 020 7219 7072
www.damiancollins.com

From: David Godkin <godkin@birnbaumgodkin.com>
Date: Friday, 23 November 2018 at 23:45
To: "SALIMI, Saira" <salimis@parliament.uk>, Damian Collins <damian.collins.mp@parliament.uk>, "CHALLENGER, Chloe" <CHALLENGERC@parliament.uk>
Cc: Laura Miller <LMiller@durietangri.com>, "Sonal N. Mehta - Durie Tangri (smehta@durietangri.com)" <smehta@durietangri.com>, Josh Lerner <JLerner@durietangri.com>, Catherine Kim <CKim@durietangri.com>, SERVICE-SIX4THREE <SERVICE-SIX4THREE@durietangri.com>, Stuart Gross <sgross@grosskleinlaw.com>
Subject: RE: Order of the DCMS Committee for the production of papers

All,

It came to my attention this afternoon that Mr. Kramer did in fact provide you with certain documents on Wednesday afternoon in response to the DCMS Committee Orders. Mr. Kramer was instructed not to do so because the documents were subject to a Protective Order entered by the San Mateo Superior Court, and because the San Mateo Superior Court had ordered Mr. Kramer to refrain from producing documents and that failure to comply would be in violation of the Superior Court's order.

I have advised Facebook's counsel of these developments so that Facebook can take any action it deems appropriate. In addition, I urge to you refrain from reviewing the materials provided by Mr. Kramer, refrain from providing them to any third parties, and to return all such materials including any copies either to me or to Facebook's counsel (copied herewith).

Very truly yours,

David Godkin

From: SALIMI, Saira <salimis@parliament.uk>
Sent: Friday, November 23, 2018 4:59 AM
To: David Godkin <godkin@birnbaumgodkin.com>
Subject: Order of the DCMS Committee for the production of papers

Dear Mr Godkin

Please see the attached letter in reply to yours of Wednesday to Damian Collins MP.

S A Salimi

Speaker's Counsel

Office of Speaker's Counsel

1st Floor, Richmond House, House of Commons, London, SW1A 0AA

020 7219 3776 (Office)

07801 890 933 (Mobile)

18001 020 7219 3776 (Text relay)

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EXHIBIT 11

1 Julie E. Schwartz, Bar No. 260624
JSchwartz@perkinscoie.com
2 PERKINS COIE LLP
3150 Porter Drive
3 Palo Alto, CA 94304-1212
Telephone: 650.838.4300
4 Facsimile: 650.838.4350

5 James R. McCullagh, admitted *pro hac vice*
JMcCullagh@perkinscoie.com
6 PERKINS COIE LLP
1201 Third Avenue, Suite 4900
7 Seattle, WA 98101-3099
Telephone: 206.359.8000
8 Facsimile: 206.359.9000

9 Attorneys for Defendant
Facebook, Inc.

FILED
SAN MATEO COUNTY

OCT 25 2016

Clerk of the Superior Court

By

DEPUTY CLERK

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12 **COUNTY OF SAN MATEO**

14 SIX4THREE, LLC, a Delaware limited
liability company,

15
16 Plaintiff,

17 v.

18 FACEBOOK, INC., a Delaware
corporation and DOES 1-50, inclusive,

19 Defendant.
20

Case No. CIV533328

**STIPULATED [PROPOSED]
PROTECTIVE ORDER**

21 In order to protect confidential information obtained by the parties in connection with this
22 case, the parties, by and through their respective undersigned counsel and subject to the approval
23 of the Court, hereby agree as follows:

24 **Part One: Use Of Confidential Materials In Discovery**

25 1. Any party or non-party may designate as Confidential Information (by stamping
26 the relevant page or as otherwise set forth herein) any document or response to discovery which
27 that party or non-party considers in good faith to contain information involving trade secrets, or
28

CIV533328
ORD
Order
231729



-1-

STIPULATED [PROPOSED] PROTECTIVE ORDER
CASE NO. CIV533328

1 confidential business, financial, or personal information, including personal financial information
2 about any individual or entity; information regarding any individual's or entity's banking
3 relationship with any banking institution, including information regarding financial transactions
4 or financial accounts, and any information regarding any individual or entity that is not otherwise
5 available to the public, subject to protection under Rules 2.550, 2.551, 2.580, 2.585, 8.160, and
6 8.490 of the California Rules of Court or under other provisions of California law. Any party or
7 non-party may designate as Highly Confidential Information (by stamping the relevant page or as
8 otherwise set forth herein) any document or response to discovery which that party or non-party
9 considers in good faith to contain information involving highly sensitive trade secrets or
10 confidential business, financial, or personal information, the disclosure of which would result in
11 the disclosure of trade secrets or other highly sensitive research, development, production,
12 personnel, commercial, market, financial, or business information, or highly sensitive personal
13 information, subject to protection under Rules 2.550, 2.551, 2.580, 2.585, 8.160, and 8.490 of the
14 California Rules of Court or under other provisions of California law. Where a document or
15 response consists of more than one page, the first page and each page on which confidential
16 information appears shall be so designated.

17 2. A party or non-party may designate information disclosed during a deposition or in
18 response to written discovery as Confidential Information or Highly Confidential Information by
19 so indicating in said responses or on the record at the deposition and requesting the preparation of
20 a separate transcript of such material. In addition, a party or non-party may designate in writing,
21 within thirty (30) days after receipt of said responses or of the deposition transcript for which the
22 designation is proposed, that specific pages of the transcript and/or specific responses be treated
23 as Confidential Information or Highly Confidential Information. Any other party may object to
24 such proposal, in writing or on the record. Upon such objection, the parties shall follow the
25 procedures described in Paragraph 9 below. Until the thirty (30) day period for designation has
26 lapsed, the entirety of each deposition transcript shall be treated as Confidential Information.
27 After the thirty (30) day period for designation has lapsed, any documents or information
28 designated pursuant to the procedure set forth in this paragraph shall be treated according to the

1 designation until the matter is resolved according to the procedures described in Paragraph 9
2 below, and counsel for all parties shall be responsible for marking all previously unmarked copies
3 of the designated material in their possession or control with the specified designation. A party
4 that makes original documents or materials available for inspection need not designate them as
5 Confidential Information or Highly Confidential Information until after the inspecting party has
6 indicated which materials it would like copied and produced. During the inspection and before the
7 designation and copying, all of the material made available for inspection shall be considered
8 Highly Confidential Information.

9 3. All Confidential Information or Highly Confidential Information produced or
10 exchanged in the course of this case (not including information that is publicly available) shall be
11 used by the party or parties to whom the information is produced solely for the purpose of this
12 case. Confidential Information or Highly Confidential Information shall not be used for any
13 commercial competitive, personal, or other purpose. Confidential Information or Highly
14 Confidential Information must be stored and maintained by a receiving party at a location and in a
15 secure manner that ensures that access is limited to the persons authorized under this Stipulated
16 Protective Order. The protections conferred by this Stipulated Protective Order cover not only
17 the Confidential Information or Highly Confidential Information produced or exchanged in this
18 case, but also (1) any information copied or extracted from or reflecting the Confidential
19 Information or Highly Confidential Information; (2) all copies, excerpts, summaries, or
20 compilations of Confidential Information or Highly Confidential Information; and (3) any
21 testimony, conversations, or presentations by parties or their counsel that might reveal
22 Confidential Information or Highly Confidential Information. However, the protections
23 conferred by this Stipulated Protective Order do not cover the following information: (a) any
24 information that is in the public domain at the time of disclosure to a receiving party or becomes
25 part of the public domain after its disclosure to a receiving party as a result of publication not
26 involving a violation of this Stipulated Protective Order, including becoming part of the public
27 record through trial or otherwise; and (b) any information known to the receiving party prior to
28

1 the disclosure or obtained by the receiving party after the disclosure from a source who obtained
2 the information lawfully and under no obligation of confidentiality to the designating party.

3 4. Except with the prior written consent of the other parties, or upon prior order of
4 this Court obtained upon notice to opposing counsel, Confidential Information shall not be
5 disclosed to any person other than:

- 6 (a) counsel for the respective parties to this litigation, including in-house
7 counsel and co-counsel retained for this litigation;
- 8 (b) employees of such counsel;
- 9 (c) individual parties or officers or employees of a party, to the extent deemed
10 necessary by counsel for the prosecution or defense of this litigation;
- 11 (d) consultants or expert witnesses retained for the prosecution or defense of
12 this litigation, provided that each such person shall execute a copy of the
13 Certification annexed to this Order (which shall be retained by counsel to
14 the party so disclosing the Confidential Information and made available
15 for inspection by opposing counsel during the pendency or after the
16 termination of the action only upon good cause shown and upon order of
17 the Court) before being shown or given any Confidential Information, and
18 provided that if the party chooses a consultant or expert employed by the
19 opposing party or one of its competitors, the party shall notify the
20 opposing party, or designating non-party, before disclosing any
21 Confidential Information to that individual and shall give the opposing
22 party an opportunity to move for a protective order preventing or limiting
23 such disclosure;
- 24 (e) any authors or recipients of the Confidential Information or a custodian;
- 25 (f) the Court, court personnel, and court reporters; and
- 26 (g) witnesses (other than persons described in Paragraph 4(e)). A witness shall
27 sign the Certification before being shown a confidential document.
28 Confidential Information may be disclosed to a witness who will not sign

1 the Certification only in a deposition at which the party who designated
2 the Confidential Information is represented or has been given notice that
3 Confidential Information produced by the party may be used. At the
4 request of any party, the portion of the deposition transcript involving the
5 Confidential Information shall be designated "Confidential" pursuant to
6 Paragraph 2 above. Witnesses shown Confidential Information shall not be
7 allowed to retain copies.

8 5. Except with the prior written consent of the other parties, or upon prior order of
9 this Court obtained after notice to opposing counsel, Highly Confidential Information shall be
10 treated in the same manner as Confidential Information pursuant to Paragraph 4 above, except
11 that it shall not be disclosed to individual parties or directors, officers or employees of a party, or
12 to witnesses (other than persons described in Paragraph 4(a) or 4(e)).

13 6. Any persons receiving Confidential Information or Highly Confidential
14 Information shall not reveal or discuss such information to or with any person who is not entitled
15 to receive such information, except as set forth herein. If a party or any of its representatives,
16 including counsel, inadvertently discloses any Confidential Information or Highly Confidential
17 Information to persons who are not authorized to use or possess such material, the party shall
18 provide immediate written notice of the disclosure to the party whose material was inadvertently
19 disclosed. If a party has actual knowledge that Confidential Information or Highly Confidential
20 Information is being used or possessed by a person not authorized to use or possess that material,
21 regardless of how the material was disclosed or obtained by such person, the party shall provide
22 immediate written notice of the unauthorized use or possession to the party whose material is
23 being used or possessed. No party shall have an affirmative obligation to inform itself regarding
24 such possible use or possession.

25 7. In connection with discovery proceedings as to which a party submits Confidential
26 Information or Highly Confidential Information, all documents and chamber copies containing
27 Confidential Information or Highly Confidential Information which are submitted to the Court
28 shall be filed with the Court in sealed envelopes or other appropriate sealed containers. On the

1 outside of the envelopes, a copy of the first page of the document shall be attached. If
2 Confidential Information or Highly Confidential Information is included in the first page attached
3 to the outside of the envelopes, it may be deleted from the outside copy. The word
4 "CONFIDENTIAL" shall be stamped on the envelope and a statement substantially in the
5 following form shall also be printed on the envelope:

6 "This envelope is sealed pursuant to Order of the Court, contains Confidential
7 Information and is not to be opened or the contents revealed, except by Order of the
8 Court or agreement by the parties."

9 8. A party may designate as Confidential Information or Highly Confidential
10 Information documents or discovery materials produced by a non-party by providing written
11 notice to all parties of the relevant document numbers or other identification within thirty (30)
12 days after receiving such documents or discovery materials. Until the thirty (30) day period for
13 designation has lapsed, any documents or discovery materials produced by a non-party shall be
14 treated as Confidential Information. Any party or non-party may voluntarily disclose to others
15 without restriction any information designated by that party or nonparty as Confidential
16 Information or Highly Confidential Information, although a document may lose its confidential
17 status if it is made public. If a party produces materials designated Confidential Information or
18 Highly Confidential Information in compliance with this Order, that production shall be deemed
19 to have been made consistent with any confidentiality or privacy requirements mandated by local,
20 state or federal laws.

21 9. If a party contends that any material is not entitled to confidential treatment, such
22 party may at any time give written notice to the party or non-party who designated the material.
23 The party or non-party who designated the material shall have twenty (20) days from the receipt
24 of such written notice to apply to the Court for an order designating the material as confidential.
25 The party or non-party seeking the order has the burden of establishing that the document is
26 entitled to protection.
27
28

1 10. Notwithstanding any challenge to the designation of material as Confidential
2 Information or Highly Confidential Information, all documents shall be treated as such and shall
3 be subject to the provisions hereof unless and until one of the following occurs:

4 (a) the party or non-party who claims that the material is Confidential
5 Information or Highly Confidential Information withdraws such
6 designation in writing; or

7 (b) the party or non-party who claims that the material is Confidential
8 Information or Highly Confidential Information fails to apply to the Court
9 for an order designating the material confidential within the time period
10 specified above after receipt of a written challenge to such designation; or

11 (c) the Court rules the material is not Confidential Information or Highly
12 Confidential Information.

13 11. All provisions of this Order restricting the communication or use of Confidential
14 Information or Highly Confidential Information shall continue to be binding after the conclusion
15 of this action, unless otherwise agreed or ordered. Upon conclusion of the litigation, a party in the
16 possession of Confidential Information or Highly Confidential Information shall within sixty (60)
17 days either (a) return such documents to counsel for the party or non-party who provided such
18 information, or (b) destroy such documents. Whether the Confidential Information or Highly
19 Confidential Information is returned or destroyed, the receiving party must submit a written
20 certification to the producing party (and, if not the same person or entity, to the designating party)
21 by the 60 day deadline that (1) all the Confidential Information or Highly Confidential
22 Information that was returned or destroyed, and (2) affirms that the receiving party has not
23 retained any copies, abstracts, compilations, summaries or any other format reproducing or
24 capturing any of the Confidential Information or Highly Confidential Information.

25 Notwithstanding this provision, counsel are entitled to retain an archival copy of all pleadings,
26 motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence,
27 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert
28 work product, even if such materials contain Confidential Information or Highly Confidential

1 Information. Any such archival copies that contain or constitute Confidential Information or
2 Highly Confidential Information remain subject to this Stipulated Protective Order. The
3 conclusion of the litigation shall be deemed to be the later of (1) dismissal of all claims and
4 defenses in this action, with or without prejudice; and (2) final judgment herein after the
5 completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
6 including the time limits for filing any motions or applications for extension of time pursuant to
7 applicable law. After the conclusion of this action, this Court will retain jurisdiction to enforce
8 the terms of this Order.

9 12. Nothing herein shall be deemed to waive any applicable privilege or work product
10 protection, or to affect the ability of a party to seek relief for an inadvertent disclosure of material
11 protected by privilege or work product protection. Any witness or other person, firm or entity
12 from which discovery is sought may be informed of and may obtain the protection of this Order
13 by written advice to the parties' respective counsel or by oral advice at the time of any deposition
14 or similar proceeding.

15 13. In the event that any Confidential Information or Highly Confidential Information
16 is inadvertently produced without such designation, the party or non-party that inadvertently
17 produced the information without designation shall give written notice of such inadvertent
18 production promptly after the party or non-party discovers the inadvertent failure to designate
19 (but no later than fourteen (14) calendar days after the party or non-party discovers the
20 inadvertent failure to designate), together with a further copy of the subject information
21 designated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" (the "Inadvertent Production
22 Notice"). Upon receipt of such Inadvertent Production Notice, the party that received the
23 information that was inadvertently produced without designation shall promptly destroy the
24 inadvertently produced information and all copies thereof, or, at the expense of the producing
25 party or non-party, return such together with all copies of such information to counsel for the
26 producing party and shall retain only the newly-produced versions of that information that are
27 designated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL." This provision is not
28 intended to apply to any inadvertent production of any information or materials protected by

1 attorney-client or work product privileges, which inadvertent production is governed by Section
2 14 below.

3 14. In the event that any party or non-party inadvertently produces information that is
4 privileged or otherwise protected from disclosure during the discovery process ("Inadvertent
5 Production Material"), the following shall apply:

6 (a) Such inadvertent production or disclosure shall in no way prejudice or
7 otherwise constitute a waiver of, or estoppel as to, any claim of attorney-client privilege, attorney
8 work product protection, or other applicable protection in this case or any other federal or state
9 proceeding, provided that the producing party shall notify the receiving party in writing of such
10 protection or privilege promptly after the producing party discovers such materials have been
11 inadvertently produced.

12 (b) If a claim of inadvertent production is made, pursuant to this Stipulated
13 Protective Order, with respect to discovery material then in the custody of another party, that
14 party shall: (i) refrain from any further examination or disclosure of the claimed Inadvertent
15 Production Material; (ii) promptly make a good-faith effort to return the claimed Inadvertent
16 Production Material and all copies thereof (including summaries and excerpts) to counsel for the
17 producing party, or destroy all such claimed Inadvertent Production Material (including
18 summaries and excerpts) and certify in writing to that fact; and (iii) not disclose or use the
19 claimed Inadvertent Production Material for any purpose until further order of the Court expressly
20 authorizing such use.

21 (c) A party may move the Court for an order compelling production of the
22 Inadvertent Production Material on the ground that it is not, in fact, privileged or protected. The
23 motion shall be filed under seal and shall not assert as a ground for entering such an order the fact
24 or circumstance of the inadvertent production. The producing party retains the burden of
25 establishing the privileged or protected nature of any inadvertently disclosed or produced
26 information. While such a motion is pending, the Inadvertent Production Material at issue shall
27 be treated in accordance with Paragraph 14(b) above.
28

1 (d) If a party, in reviewing discovery material it has received from any other
2 party or any non-party, finds anything the reviewing party believes in good faith may be
3 Inadvertent Production Material, the reviewing party shall: (i) refrain from any further
4 examination or disclosure of the potentially Inadvertent Production Material; (ii) promptly
5 identify the material in question to the producing party (by document number or other equally
6 precise description); and (iii) give the producing party seven (7) days to respond as to whether the
7 producing party will make a claim of inadvertent production. If the producing party makes such a
8 claim, the provisions of Paragraphs 14(a)-(c) above shall apply.

9 15. The parties agree that should the production of source code become necessary,
10 they will need to amend or supplement the terms of this Order. To the extent production of
11 source code becomes necessary in this case, the parties will work expeditiously to propose
12 amendments to this Order to cover any production of source code.

13 16. If a party is served with a subpoena or a court order issued in other litigation that
14 compels disclosure of any Confidential Information or Highly Confidential Information, the
15 receiving party must:

16 (a) promptly notify in writing the designating party. Such notification shall
17 include a copy of the subpoena or court order;

18 (b) promptly notify in writing the party who caused the subpoena or order to
19 issue in the other litigation that some or all of the material covered by the subpoena or order is
20 subject to this Stipulated Protective Order. Such notification shall include a copy of this
21 Stipulated Protective Order; and

22 (c) cooperate with respect to all reasonable procedures sought to be pursued by
23 the designating party whose Confidential Information or Highly Confidential Information may be
24 affected.

25 If the designating party timely seeks a protective order, the party served with the subpoena
26 or court order shall not produce any Confidential Information or Highly Confidential Information
27 before a determination by the court from which the subpoena or order issued, unless the party has
28 obtained the designating party's permission. The designating party shall bear the burden and

1 expense of seeking protection in that court of its confidential material—and nothing in these
2 provisions should be construed as authorizing or encouraging a receiving party in this action to
3 disobey a lawful directive from another court.

4 17. The following additional terms apply to non-party discovery material:

5 (a) The terms of this Order are applicable to information produced by a non-
6 party in this action and designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL.”
7 Such information produced by non-parties in connection with this litigation is protected by the
8 remedies and relief provided by this Order. Nothing in these provisions should be construed as
9 prohibiting a non-party from seeking additional protections.

10 (b) In the event that a party is required, by a valid discovery request, to
11 produce a non-party’s confidential information in its possession, and the party is subject to an
12 agreement with the non-party not to produce the non-party’s confidential information, then the
13 party shall:

14 i. promptly notify in writing the requesting party and the non-party
15 that some or all of the information requested is subject to a confidentiality agreement with a non-
16 party;

17 ii. promptly provide the non-party with a copy of the Stipulated
18 Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific
19 description of the information requested; and

20 iii. make the information requested available for inspection by the non-
21 party.

22 (c) If the non-party fails to object or seek a protective order from this Court
23 within 28 days of receiving the notice and accompanying information, the receiving party may
24 produce the non-party’s confidential information responsive to the discovery request. If the non-
25 party timely seeks a protective order, the receiving party shall not produce any information in its
26 possession or control that is subject to the confidentiality agreement with the non-party before a
27 determination by the Court. Absent a court order to the contrary, the non-party shall bear the
28

1 burden and expense of seeking protection in this Court of its Confidential Information or Highly
2 Confidential Information.

3 18. Nothing in this Stipulated Protective Order shall be construed to preclude any
4 party from asserting in good faith that certain Confidential Information or Highly Confidential
5 Information requires additional protections. The parties shall meet and confer to agree upon the
6 terms of such additional protection. By stipulating to the entry of this Protective Order no party
7 waives any right it otherwise would have to object to disclosing or producing any information or
8 item on any ground not addressed in this Stipulated Protective Order. Similarly, no party waives
9 any right to object on any ground to use in evidence of any of the material covered by this
10 Stipulated Protective Order. Nothing in this Stipulated Protective Order abridges the right of any
11 person to seek its modification by the Court in the future.

12 **Part Two: Use of Confidential Materials in Court**

13 The following provisions govern the treatment of Confidential Information or Highly
14 Confidential Information used at trial or submitted as a basis for adjudication of matters other
15 than discovery motions or proceedings. These provisions are subject to Rules 2.550, 2.551, 2.580,
16 2.585, 8.160, and 8.490 of the California Rules of Court and must be construed in light of those
17 Rules.

18 19. A party that files with the Court, or seeks to use at trial, materials designated as
19 Confidential Information or Highly Confidential Information, and who seeks to have the record
20 containing such information sealed, shall submit to the Court a motion or an application to seal,
21 pursuant to California Rule of Court 2.551.

22 20. A party that files with the Court, or seeks to use at trial, materials designated as
23 Confidential Information or Highly Confidential Information by anyone other than itself, and who
24 does not seek to have the record containing such information sealed, shall comply with either of
25 the following requirements:

- 26 (a) At least ten (10) business days prior to the filing or use of the Confidential
27 Information or Highly Confidential Information, the submitting party shall
28 give notice to all other parties, and to any non-party that designated the

1 materials as Confidential Information or Highly Confidential Information
2 pursuant to this Order, of the submitting party's intention to file or use the
3 Confidential Information or Highly Confidential Information, including
4 specific identification of the Confidential Information or Highly
5 Confidential Information. Any affected party or non-party may then file a
6 motion to seal, pursuant to California Rule of Court 2.551(b); or

7 (b) At the time of filing or desiring to use the Confidential Information or
8 Highly Confidential Information, the submitting party shall submit the
9 materials pursuant to the lodging-under-seal provision of California Rule of
10 Court 2.551(d). Any affected party or non-party may then file a motion to
11 seal, pursuant to the California Rule of Court 2.551(b), within ten (10)
12 business days after such lodging. Documents lodged pursuant to California
13 Rule of Court 2.551(d) shall bear a legend stating that such materials shall
14 be unsealed upon expiration of ten (10) business days, absent the filing of a
15 motion to seal pursuant to Rule 2.551(b) or Court order.

16 21. In connection with a request to have materials sealed pursuant to Paragraph 12 or
17 Paragraph 13, the requesting party's declaration pursuant to California Rule of Court 2.551(b)(1)
18 shall contain sufficient particularity with respect to the particular Confidential Information or
19 Highly Confidential Information and the basis for sealing to enable the Court to make the findings
20 required by California Rule of Court 2.550(d).

21 **IT IS SO STIPULATED.**

22
23 DATED: _____, 2016

24 **PERKINS COIE LLP**

25 By: _____
26 Julie E. Schwartz

27 *Attorneys for Defendant*
28 *Facebook, Inc.*

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DATED: _____, 2016

BIRNBAUM & GODKIN, LLP

By: _____
David Godkin

Attorneys for Plaintiff
SIX4THREE, LLC

IT IS SO ORDERED.

DATED: 10/24, 2016


JUDGE OF THE SUPERIOR COURT

CERTIFICATION

I hereby certify my understanding that Confidential Information or Highly Confidential Information is being provided to me pursuant to the terms and restrictions of the Stipulation and Protective Order Regarding Confidential Information filed on _____, 2016, in *Six4Three, LLC v. Facebook, Inc.*, San Mateo County Superior Court Case No. CIV533328 ("Order"). I have been given a copy of that Order and read it.

I agree to be bound by the Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I will not reveal the Confidential Information or Highly Confidential Information to anyone, except as allowed by the Order. I will maintain all such Confidential Information or Highly Confidential Information, including copies, notes, or other transcriptions made therefrom, in a secure manner to prevent unauthorized access to it. No later than thirty (30) days after the conclusion of this action, I will return the Confidential Information or Highly Confidential Information, including copies, notes, or other transcriptions made therefrom, to the counsel who provided me with the Confidential Information or Highly Confidential Information. I hereby consent to the jurisdiction of the San Mateo County Superior Court for the purpose of enforcing the Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ located at the address of _____ as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

I declare under penalty of perjury that the foregoing is true and correct and that this certificate is executed this ____ day of _____, 2016, at _____.

By: _____

Address: _____

Phone: _____

EXHIBIT 47

1 Stuart G. Gross (#251019)
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11 Attorneys for Plaintiff,
SIX4THREE, LLC, a Delaware
12 limited liability company
13

14 SUPERIOR COURT OF CALIFORNIA

15 COUNTY OF SAN MATEO

16 SIX4THREE, LLC, a Delaware limited
17 liability company,

18 Plaintiff,

19 v.

20 FACEBOOK, INC., a Delaware corporation
21 and DOES 1 through 50, inclusive

22 Defendants.

) Case No. CIV 533328
)
)

) **Assigned for all purposes to Hon. V.**
) **Raymond Swope, Dept. 23**
)

) **DECLARATION OF STUART G.**
) **GROSS IN SUPPORT OF'**
) **PLAINTIFF'S BRIEF IN RESPONSE**
) **TO NOVEMBER 20, 2018 ORDER**
)

) Department: 23
) Judge: Honorable V. Raymond Swope
) Filing Date: April 10, 2015
) Trial Date: April 25, 2019
)

1 I, Stuart G. Gross, declare as follows:

2 1. I am counsel for Plaintiff Six4Three (“Six4Three”) and a partner at Gross &
3 Klein LLP. I make this declaration based on personal knowledge and, if called on to testify, I
4 could and would truthfully testify to the following.

5 2. I have a hearing on case dispositive cross-motions for summary judgment before
6 the Honorable Judge William H. Alsup of the Northern District of California on November 28,
7 2018 at 8:00 a.m., in a matter on which I am lead counsel. I, therefore, respectfully request that
8 any hearing on the instant matter be scheduled by the Court on a date and time other than the
9 morning of November 28, 2018.

10 3. On February 21, 2018, I was contacted by David Godkin about my potential
11 retention by Six4Three as local counsel in this action. I was informed that Six4Three’s then
12 local counsel, Basil P. Fthenakis of Criterion Law, was retiring from the practice of law,
13 necessitating his replacement.

14 4. After an initial call during which no confidential information was discussed, on
15 March 5, 2018, Mr. Godkin provided me the Stipulated Protective Order entered in this action
16 (the “Protective Order”) and asked me to execute its certification. I did so the same day.
17 Attached hereto as **Exhibit A** is a true and correct copy of the certification that I executed.

18 5. On March 18, 2018, I was retained by Six4Three, as its local counsel in this
19 action; and, on March 22, 2018, Six4Three filed a Substitution of Counsel, effecting my
20 replacement of Mr. Fthenakis in this action.

21 6. In the evening of November 19, 2018, I received a letter from Defendants’
22 counsel, which suggested that Six4Three’s Managing Director Ted Kramer may have had
23 access to documents designated highly confidential by Defendants and/or summaries thereof. I
24 did not know of any way in which Mr. Kramer would have had access to such documents. Thus,
25 lead counsel and I immediately took actions to determine whether there was any basis for
26 Defendants’ counsel’s suggestion.

27 7. As a result of this investigation, on November 20, 2018, I became aware for the
28 first time that documents designated as highly confidential under the Protective Order, as well

1 as summaries of such documents, had been placed in a folder located in Six4Three's dropbox
2 account over which Mr. Kramer had access, as administrator of the dropbox account.

3 8. When I learned this, I immediately confirmed that Mr. Kramer had never
4 reviewed any documents designated as highly confidential under the Protective Order. That
5 same morning, I set up a shared location on my firm's cloud file system to which only members
6 of the legal team could gain access, and took actions to cause the removal of all of the contents
7 on the aforementioned folder from Six4Three's dropbox to this new attorneys-only location. I
8 was not aware at the time that Six4Three's dropbox account was set up to sync (i.e. save local
9 copies of) of the documents in question to the laptop that Mr. Kramer had in his possession.

10 9. On November 23, 2018, I learned that, on November 21, 2018, Mr. Kramer had
11 provided certain documents to the Digital, Culture, Media and Sports Committee ("DCMS") of
12 the U.K. Parliament that likely included, as exhibits, documents designated confidential and
13 highly confidential, as well as summaries of such documents.

14 10. This was extremely vexing and surprising given the previous efforts that I and
15 lead counsel had taken with the goal of preventing Mr. Kramer from taking such actions and the
16 actions I had taken with the goal of eliminating Mr. Kramer's access to any documents
17 designated highly confidential by Defendants and any summaries thereof.

18 11. In response to this information, I took further actions to ensure that consistent
19 with my previous efforts, the aforementioned folder was, in fact, deleted from Six4Three's
20 dropbox and that any local copies of its contents were deleted from Mr. Kramer's computer.

21 12. I am admitted to the bars of California and New York. I hold no license to
22 practice in the United Kingdom and am not qualified to offer legal opinions on issues of United
23 Kingdom law.

24 13. I affirm that any factual assertions contained herein are supported by competent
25 evidence to the extent such evidence exists and without waiver of privilege.

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I declare under the penalty of perjury that the foregoing is true and correct.

Executed on November 26, 2018 at Sebastopol, California.

By: 
STUART G. GROSS

EXHIBIT A

CERTIFICATION

I hereby certify my understanding that Confidential Information or Highly Confidential Information is being provided to me pursuant to the terms and restrictions of the Stipulation and Protective Order Regarding Confidential Information filed on March 25, 2016, in *Six4Three, LLC v. Facebook, Inc.*, San Mateo County Superior Court Case No. CIV533328 ("Order"). I have been given a copy of that Order and read it.

I agree to be bound by the Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I will not reveal the Confidential Information or Highly Confidential Information to anyone, except as allowed by the Order. I will maintain all such Confidential Information or Highly Confidential Information, including copies, notes, or other transcriptions made therefrom, in a secure manner to prevent unauthorized access to it. No later than thirty (30) days after the conclusion of this action, I will return the Confidential Information or Highly Confidential Information, including copies, notes, or other transcriptions made therefrom, to the counsel who provided me with the Confidential Information or Highly Confidential Information. I hereby consent to the jurisdiction of the San Mateo County Superior Court for the purpose of enforcing the Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ located at the address of _____ as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

I declare under penalty of perjury that the foregoing is true and correct and that this certificate is executed this 5th day of March, ~~2016~~ ²⁰¹⁸, at San Francisco, CA 94111.

By: Stuart G. Gross

Address: The Embarcadero, Pier 9, Suite 100
San Francisco, CA 94111

Phone: (415) 671-4628

EXHIBIT 48

From: [REDACTED]@theguardian.com>
Sent time: 05/22/2018 04:40:34 AM
To: Thomas Scaramellino <thomas.scaramellino@gmail.com>
Cc: David Godkin; [REDACTED]@mkslex.com>; James Kruzer; Ted Kramer <ted@six4three.com>
Subject: Re: Six4Three v. Facebook Application and Amicus Brief

Hi there,

Yes, understood. Can we talk 8am your time? (I think that's 1pm my time not 2pm). The Guardian's counsel has said that we need to research and file our own independent brief that he puts in the range of \$12-15,000 costwise. I've told them how important it is and how the primary consideration here should be editorial/journalistic first and cost second but there will obviously be some discuss around this which won't happen until US business hours so, depending on how that goes, we may need to delay reporting. But let's speak later if that's okay.

Thanks, [REDACTED]

On 22 May 2018 at 01:29, Thomas Scaramellino <thomas.scaramellino@gmail.com> wrote:

The key thing with [REDACTED] is that if the article identifies him as an expert witness or bases his confirmation of the allegations on the fact that he has reviewed the evidence, then Facebook will cry foul at the hearing and distract the judge. We have no obligation right now to disclose a new expert witness to them but that won't matter. They will fabricate an issue about it anyway that could be just enough of a sideshow to derail our efforts on July 2. They will claim (falsely) that we improperly revealed evidence and that very well could cause the judge to step back and delay his ruling on making the evidence public.

On Mon, May 21, 2018 at 5:19 PM Thomas Scaramellino <thomas.scaramellino@gmail.com> wrote:

Ok very helpful. Why don't you work on getting US Guardian confirmation on filing and continue to plan to move forward and maybe we can all talk around 8am Eastern US time, which I believe is 2pm your time. If we need to do earlier just lmk but I think you can keep ball rolling as we seem to be on same page. I think anonymous quotes from [REDACTED] would be fine so long as he isn't identified as an expert witness and you have someone like [REDACTED] willing to go on record. An article entirely based on anonymous sources will be much more susceptible to counter attack so would very much prefer to avoid. Let me know how that sounds.

On Mon, May 21, 2018 at 4:01 PM [REDACTED]@theguardian.com> wrote:

On Mon, May 21, 2018 at 9:11 PM, [redacted] wrote:
Sorry, and on final point, totally agree. I haven't managed to get hold of [redacted] to discuss lawyers' call but, yes, I agree, Guardian must give full commitment. In UK, that has been cleared & agreed, they are just waiting for US legal feedback

On Mon, 21 May 2018 at 23:59, [redacted] <[\[redacted\]@theguardian.com](mailto:[redacted]@theguardian.com)> wrote:

Hi Thomas,

Thanks. All good points and I think generally we are on same page. Happy to work toward whatever you feel best approach. Re [redacted] understood, though would still like to use anon quotes if possible. Re [redacted] that is what I am trying to do..he is up for it but needs to run it by his lawyer.

Re Facebook pushback, most important thing is to simply address (even if v briefly) major lines of attack otherwise one opens oneself up for counter-attack.

Brief quotes from counsel sounds good plan. Plus, ideally, some context & background (but doesn't have to be extensive.)

Re time of call, I'm completely flexible-whatever works best for you..but ideally to present news plan by latest midday UK time. And the earlier the better in terms of being able to use info to inform reporting.

Thanks! [redacted]

On Mon, 21 May 2018 at 23:46, Thomas Scaramellino <thomas.scaramellino@gmail.com> wrote:

Hi [redacted]

Thanks for the thorough update. We have briefly conferred and think we can get comfortable with this but want to address a few things tmrw morning. What is the best time to speak then? I am on U.S. pacific time now but don't mind waking up in the middle of the night to discuss. Just let us know a good time and we can circulate a dial-in.

Here are a few thoughts to consider:

- We don't think it's a good idea to disclose [redacted] as an expert witness now. It gives FB's lawyers something to distract the court about by making up issues, which they have been very good at doing these past three years. I'm not sure if he could be an anonymous source verifying our allegations without disclosing him as an expert witness in the case. I'd like your thoughts on that.
- Ted mentioned that [redacted] can confirm some of our allegations in the complaint. Would he or others be willing to do so on record? We are very much hoping that the first reporting on this can verify at least a significant portion of the allegations to mitigate the impact of FB's counter punch. Since we don't want to reveal [redacted] we are wondering who might fill this gap;
- As for FB's counter-punch, we do not want to open any doors that make it easier for them to malign Ted or his company. We don't want this to be about Ted's company or app at this point, because it will distract from Facebook's own conduct, which had nothing to do with Ted's company. We also want to anticipate FB using its influence over the media to dampen this story very quickly after you print; there will need to be follow-ups prepared that effectively accomplish this. Would like to hear your thoughts;
- Ted and the company would remain off the record at this point. It is possible that the lead counsel on the case, David, would provide a brief statement saying we have no comment on the article but are confident the evidence will back up all of our allegations and are seeking to unseal the evidence in court on July 2;
- We would hope to receive assurance from the Guardian that it will be filing an application/brief to support unsealing regardless of what FB may do as a result of your decision to publish now - the most important thing for us is to obtain support in front of the judge that these documents are crucial to this ongoing public debate. We won't do anything to impeding that and we would need your firm commitment on this. We don't want to win any battles and

anything to jeopardize that goal so would need your firm commitment on this. We don't want to win any battles only to lose the war.

Hope this is helpful context. Look forward to discussing tomorrow.

Tom

On Mon, May 21, 2018 at 2:38 PM, [REDACTED]@theguardian.com> wrote:

Hi all,

Thanks so much for your time in various ways today. Great to meet Ted and hear more about the fight so far...

So, I thought it might be helpful to lay out our thoughts at the moment. This is all up for debate depending on what you think. The aim is to do this in accordance with what you want with the intention of trying to be as impactful as possible.

To that end, we thought Zuck's evidence to the EU parliament tomorrow evening is an ideal hook for doing a set of first reports - based on the publicly available docs. We could time the web publication for when Zuck is about to, or is in the process of, giving evidence.

I've talked at length with my colleague [REDACTED] and my editor, [REDACTED] and we thought the ideal would be:

- A main news story. This focuses on the central allegations laid out in the filings. What Facebook is trying to do to stop the underlying docs being made public. The Guardian's decision to file a brief in support in concert with other news orgs. And - ideally - some supporting quotes from [REDACTED] understand these need to be anonymous but it would still be really useful to have these I think.
- A secondary news story that focusses on the privacy abuses, mass data harvesting via Android etc.
- And, ideally, a background piece that is a bit more discursive. This would have something about the legal fight so far, the other developers affected, the coming Facebook PR offensive etc. It would just be slightly more colourful, easy-to-read.

This is all working on the assumption that you don't wish to go on the record as yet - though maybe there's a quote about the legal fight, or your confidence in being vindicated etc that you might consider - but uses a bit of information on background. So, there's a bit of an explanation that lays out the uphill battle it's been to get this far and what Facebook's blocking moves have been.

But up to you. If this does sound like a good plan, I'd ideally need to speak to you early UK time. We'd need to sell this into the Guardian news desk early so they are prepped and ready to run. As well as launching online tomorrow pm, we'd also try and get you on the front page for Wednesday am, and if so, that needs to be teed up as early as possible in advance. I think the timing is good, because unless there's another big news event (always possible) Zuck is probably the front page news anyway.

I'd also be interested in learning more about the ins and outs of the anti-SLAPP filing as I think that may make an interesting focus in terms of Facebook's blocking moves.

Anyway, I'll leave this with you but if tomorrow UK morning (I can do as early as necessary) works for you, that would be ideal. But obviously I understand you all have busy schedules and in which case, we can delay until later.

[REDACTED]

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EXHIBIT 49

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20 limited liability company

21 SUPERIOR COURT OF CALIFORNIA
22 COUNTY OF SAN MATEO

23 SIX4THREE, LLC, a Delaware limited
24 liability company,

25 Plaintiff,

26 v.

27 FACEBOOK, INC., et al.,

28 Defendants.

) Case No. CIV 533328

)
) Assigned for all purposes to Hon. V.
) Raymond Swope, Dept. 23

)
) **DECLARATION OF THEODORE**
) **KRAMER AUTHENTICATING**
) **EXHIBITS TO DECLARATION OF**
) **THEODORE KRAMER IN SUPPORT**
) **OF PLAINTIFF'S BRIEF IN**
) **RESPONSE TO NOVEMBER 20, 2018**
) **ORDER**

Department: 23
Judge: Honorable V. Raymond Swope
Filing Date: April 10, 2015
Trial Date: April 25, 2019

1 I, Theodore Kramer, declare:

2 1. I am the founder and Managing Director of Six4Three, LLC ("643"). I make this
3 Declaration from personal knowledge, and if called to testify, I could and would competently
4 testify thereto.
5

6 2. On November 30, 2018, in response to the Court's Order dated November 30,
7 2018 Denying Facebook's Ex Parte Application, page 4, line 25 through page 5, line 4, I
8 downloaded from my Gmail account full copies of the emails and attachments to my
9 Declaration filed in support of Plaintiff's Brief in Response to the Court's November 20, 2018
10 Order. I have attached true, correct and authentic copies of such documents hereto as Exhibit A.

11 I declare under the penalty of perjury under the laws of the State of California that the
12 foregoing is true and correct.

13 Executed November 30, 2018 at San Francisco, California.

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16 Theodore Kramer
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27
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EXHIBIT A



Theodore Kramer <theodore.kramer@gmail.com>

Extensive evidence relevant to Facebook's data and privacy abuses

Theodore Kramer <theodore.kramer@gmail.com>

Mon, Oct 1, 2018 at 11:47 AM

To: damian.collins.mp@parliament.uk

Damian,

I've been following your leadership in the House of Commons Culture, Media and Sport Select Committee over the past year and have been extremely impressed with your passion for finding the truth with regards to Brexit, Cambridge Analytica, and Facebook's involvement in all of the above.

My company has been in litigation with Facebook and Mark Zuckerberg for three years and has obtained extensive discovery of communications between Zuckerberg and numerous other Facebook executives and employees regarding Facebook's treatment of user data and third party developers from 2007 to 2015.

Just recently, Carole Cadwalladr of The Guardian published two articles related to our case and what we have uncovered during discovery since we filed suit.

<https://www.theguardian.com/technology/2018/may/24/mark-zuckerberg-set-up-fraudulent-scheme-weaponise-data-facebook-court-case-alleges>

https://www.theguardian.com/technology/2018/may/24/facebook-accused-of-conducting-mass-surveillance-through-its-apps?CMP=share_btn_tw

I believe the information we have uncovered demonstrates clearly that Facebook violated the privacy of US citizens and its prior settlement with the FTC.

I have attempted to summarize the public information from our case below. I have also attached a summary of public information regarding the conduct and our most recent opposition filed in California State Superior Court.

Finally, I have attached a document that should assist you and your committee as you approach Facebook for documentation and evidence related to the company's handling of user data since January 1st, 2012. Carole recommended we send it to you.

I would really like to take the opportunity to talk to you about our case. Would you and your staff be open to a phone call?

Regards,

Ted Kramer

--

We believe the evidence obtained in our ongoing litigation demonstrates that Zuckerberg architected a fraudulent scheme in mid-2012 in discussions with Chris Cox, Javier Olivan, Sheryl Sandberg, Dan Rose and Sam Lessin, among others. The purpose of the scheme was to weaponize friend data in order to unfairly boost Facebook's transition from desktop to mobile advertising and to wipe out competition in messaging, contact, photo, video and other consumer software markets. The scheme entailed Facebook entirely ignoring its policies and privacy settings on user data (particularly friend data) for organizations that provided revenues or other financial benefit to Facebook in order to boost its user growth and mobile ad sales. We allege the scheme was communicated to senior Platform employees in October and November 2012, at which time they had planned a public announcement to remove friend data, but Zuckerberg directed them not to do so. Instead, from 2012 on, Zuckerberg used friend data maliciously as a

stick to force companies to buy mobile ads to save Facebook's advertising business, which was not prepared for the transition from desktop computers to mobile phones. In other words, Zuckerberg tied the unrelated data and advertising products together in a malicious way. For companies who paid up in mobile ads, Zuckerberg didn't care what they did with the friend data. For companies who wouldn't pay for mobile ads or that Zuckerberg considered too competitive, Zuckerberg shut off their access to friend data even though Facebook made it available to all developers at the time. We have uncovered numerous instances of Facebook recognizing a policy violation related to user data and deciding not to enforce it in order to avoid interruption of purchases in its nascent mobile app install ads product.

Further, throughout this period from 2012 to 2015, Facebook never provided third party developers with any privacy settings when it passed user data. In other words, if Facebook knew that a user had set a photo for only "friends" to see, it refused to pass that information along to the third party developer notwithstanding that employees reported this "bug" for years. Thus, it was not even possible for Professor Kogan and Cambridge Analytica to determine how one of the quiz app's users wanted their data treated. That doesn't negate the wrongful conduct of Cambridge Analytica and others, but it does demonstrate that Facebook was the initially culpable actor here, not a third party. Facebook also deliberately took no further measures from 2012 to 2014 in order to make privacy controls around friend data more transparent and ubiquitous. This was not an accident. This was done deliberately to enable Zuckerberg to weaponize the friend data to boost partners who paid Facebook extraordinary sums in mobile advertisements that saved Facebook's advertising business in late 2012 and 2013. Facebook would not have the business it has today if Zuckerberg had not deliberately created the environment that Cambridge Analytica exploited. In sum, the Cambridge Analytica abuse was only possible because Zuckerberg became very desperate in mid/late 2012 to save his advertising business, which was collapsing due to the fact that people began using smartphones instead of computers.

Zuckerberg's scheme to arbitrarily enforce policies and friend data access based on mobile ad payments was concealed from most Facebook employees until very late 2013. Zuckerberg had begun working on a false privacy narrative for the scheme as early as 2012 and began testing it with employees in early 2013. The scheme was announced as Graph API 2.0 on April 30, 2014 with an entirely false privacy narrative (that the executives who implemented it self-consciously recognized as false) and which hid Facebook's decision to put a wall around its Platform behind the announcement of an unrelated project revamping Facebook's Login product. Interestingly, Facebook's original announcement removing friend data in April 2014 noted only that "several rarely used endpoints" were being removed. Internal emails show that these endpoints, including friend data, were the most widely used in Platform, contradicting Facebook's public claims. The fact that these endpoints were widely used appears obvious now in light of the fact that Cambridge Analytica used them to access data for 50 million consumers. Thus, Facebook's 2015 statement that the endpoints were "rarely used" is at best intentionally misleading.

Finally, we have alleged that Facebook engaged in almost a dozen projects after the FTC Order in which Facebook misled users regarding how their data was treated, ranging from commingling Onavo data with Facebook data prior to any update to the Onavo terms of service to the decision to track the texts and call logs of Android users without sign off from the privacy and legal departments at Facebook (and without updating the Facebook Android permissions) to deliberately ignoring privacy settings for a popular Facebook feature to Zuckerberg's repeated requests that when a user sets the privacy on a piece of data to "only me" that Facebook must make that setting "unsticky" to encourage users to share their data more broadly than they feel comfortable doing.

3 attachments



Summary of Complaint.pdf

234K



FILED Corrected Opp to Individual Defendants Anti-SLAPP.pdf

2423K



Requests for Production_six4three.pdf

94K

Summary of Allegations in Six4Three's Fifth Amended Complaint

Zuckerberg Decided In 2012 to Weaponize Friend Data To Transition Facebook's Failing PC Advertising Business to Smartphones

By 2012, people across the world were accessing the Internet from phones more frequently than from PCs. But virtually all of Facebook's revenues in the first half of 2012 were from desktop ads on PCs. In the second and third quarter of 2012, Facebook's revenues, profits and stock price plummeted because Facebook had not anticipated that this transition from computers to phones would happen so quickly. Par. 14, 209, 295. Because Facebook's business was falling off a cliff right while it was going through its IPO, Zuckerberg needed to do something drastic in order to transition Facebook's advertising business to smartphones as quickly as possible. Par. 14, 85, 295. In mid-2012, he held conversations with Sandberg, Cox, Olivan, Lessin, Bosworth, Rose and others in which they discussed ways to leverage Facebook Platform, and in particular friend data, to solve this problem. Par. 26, 85. They presented various options around Facebook's management of friend data to the Facebook Board of Directors in the summer of 2012. Par. 85. By late 2012, Zuckerberg communicated his decision to senior Facebook executives to implement one of the options, a new Facebook Platform policy called "reciprocity". Par. 85. Zuckerberg's reciprocity policy entailed privatizing a wide range of developer APIs, including those that transmitted friend data, and ignoring privacy and policy violations for companies who accessed this data so long as they purchased Facebook's new mobile advertising product. Par. 209, 211, 229, 231, 232. In late 2012, Zuckerberg brought Facebook Platform's top executive, Vernal, into these discussions in order to oversee and implement the plan to start trading friend data access for unrelated purchases in these new mobile ads. Par. 85. Vernal planned a public announcement of the API restrictions, including an announcement that friend data was being publicly removed, but Zuckerberg prohibited the announcement. Par. 85. Had Zuckerberg not prohibited this announcement, Professor Kogan and Cambridge Analytica would never have been able to access the data of 50 million consumers in the first place.

Instead of permitting an announcement of his decision to shut down access to friend data, Zuckerberg instructed his management team to contact other companies with the following message: they would need to start buying Facebook's new mobile ads or they will have their access to friend data shut off. Par. 238, 295. When companies responded that the data was publicly available, so how could Facebook shut off their access, Facebook decided to [publicly announce](#) an extremely vague version of its internal reciprocity policy in January 2013 in order to provide a policy excuse to shut down access to these companies who were not willing to pay. Par. 85. The reciprocity policy included removal of access to the newsfeed APIs, friends list APIs, friends permissions APIs, user ID APIs and other Graph APIs, but nowhere did Facebook's public announcement state this. Par. 85, 209. Rather, Zuckerberg deliberately designed the public version of the reciprocity policy to be as vague as possible in order for Zuckerberg to contrive an excuse to shut down any company that would not make extravagant payments to help transition Facebook's advertising business to smartphones. Par. 85. Companies that would not make these payments would go on a blacklist that Zuckerberg personally managed without having to define what he meant by a competitive application or one that replicates Facebook's "core functionality." Par. 85, 211-213. Instead, Facebook kept expanding

its definition of core functionality without providing any public guidance as to what types of companies it considered to be competitors. Par. 16-18, 24-26, 88, 90, 212. The blacklist started to grow as Facebook's ambitions began expanding far beyond its original mission of just being a social network. Par. 212. By 2012, the blacklist included major messaging applications, professional services applications and contact management applications. Par. 89, 212. By 2013, the blacklist included major gifting and payment apps, sharing economy apps, utility apps, file sharing and storage apps, birthday reminder apps, photo and video apps, calendar apps, lifestyle apps and health and fitness apps. Par. 212. The blacklist had nothing to do with whether the companies were violating user trust or privacy. It was based exclusively on whether the company posed a competitive threat to Facebook and whether it was purchasing these new mobile ads.

From late 2012 on, Zuckerberg directed the other defendants and their subordinates to approach blacklisted companies or companies that might be blacklisted in the future with a Hobson's choice: (1) start buying Facebook's mobile ads at a certain minimum spend per year (the amount of the spend has not been made public) or start feeding us *all* of your user data; or (2) Facebook will shut off access to the APIs necessary for the company's app to function. Par. 85. Either choice benefited Facebook. If the company chose option (1), Facebook's mobile advertising business grew to replace its failing desktop business. If the company chose option (2), another competitor was eliminated to make room for Facebook's ambitions to own consumer software experiences well outside the domain of a social network (e.g. messaging apps, photo and video apps, gifting and payment apps, sharing economy apps, utility apps, file sharing and storage apps, birthday reminder apps, calendar apps, lifestyle apps and health and fitness apps). Par. 209, 212. Further, if a company refused to share all its user data back to Facebook, Facebook had built scraping tools to automate pulling the data from the company's website directly without the company's permission. Par. 209. Under the reciprocity policy, Facebook required that a company provide to Facebook anything that Facebook in its own discretion deemed valuable. This primarily meant unrelated mobile advertising purchases, but in a number of cases also meant feeding data back to Facebook, rights to certain intellectual property owned by the developer, or selling the developer's company to Facebook at a price lower than its market value. Par. 209.

Similar to its use of the reciprocity policy, Facebook also maintained a "size policy." The formal, public policy simply stated that any company making a large volume of API calls needed to enter into a separate agreement with Facebook, which is standard in the software industry. The internal version of the policy was quite different: Facebook employees would explicitly encourage smaller companies to use Facebook Platform and its APIs but once the company acquired a large number of users, Facebook would then – and *only then* – shut down the company's access to its APIs. Par. 213. If Facebook found the company to be a direct competitive threat, it would not enter into any agreement, and the company's business would fall off a cliff. If Facebook determined the company was not a threat, it would require an agreement to purchase mobile ads at an extremely high minimum annual amount in order for the company to access APIs otherwise publicly available. If the company agreed to spend the money on mobile ads, Facebook would look the other way on policy and privacy violations. In other words, Facebook lied to these companies to make them dependent on Facebook with full knowledge that Facebook could crush them once they achieved a measure of success. Further, the complaint provides a host of examples where for more than two years Zuckerberg and others induce

developers to rely on the very APIs they had already decided to shut down. Par. 215-221. Any company relying from 2012 to April 2014 on any of the APIs shut down with the Graph API 2.0 announcement was operating on borrowed time. Facebook knew all of these companies' investments would be irreparably damaged and yet continued to induce their investments to unfairly prop up its new mobile advertising business.

Further, Facebook became so concerned with competitive threats, particularly in the messaging app market, that it repeatedly violated user privacy and the terms of its FTC 2012 Consent Order to access non-public information to better track competitors. Par. 79-84, 227, 234. For instance, Olivan and Zuckerberg purchased Onavo, a virtual private network app with 30 million users, in October 2013. Par. 227. Olivan then commingled data for those 30 million Onavo users with Facebook data in order to determine how popular different messaging apps were in key markets compared to Facebook's own apps. Par. 227. Olivan did this prior to any change in the Onavo user terms of service, so Onavo users had no idea their data was being used for this purpose. Par. 227. Even after changing the Onavo terms of service, Facebook never disclosed that Onavo user data would be commingled with Facebook data in order to obtain non-public information regarding the downloads and engagement of competitive apps. Par. 227. Facebook's decision to purchase WhatsApp and the staggering price it was willing to pay was the direct result of this improper use of Onavo data, which caused Facebook to believe that WhatsApp's rapid growth posed an existential threat to Facebook's business. Par. 227. Olivan also used this non-public data about competitive applications in order to determine which companies should be blacklisted from Facebook Platform. Par. 227, 234.

By the summer and fall of 2013, Zuckerberg's experiment trading access to friend data for mobile ad payments had proven successful, so he decided to expand beyond the initial companies it had identified. Par. 88. At Zuckerberg's direction, certain other Facebook executives oversaw an audit of 40,000 or more applications that had access to friend data to categorize them based on the level of competitive threat they posed to Facebook and based on which companies Facebook would approach to extract mobile ad payments upon threat of being shut down. Par. 24-28, 88. As the blacklist continued to expand and reports in the media became more common due to disgruntled developers reacting to Facebook's arbitrary and punitive decisions, Zuckerberg realized he could no longer continue down this path without a public event and narrative.

Zuckerberg Decided In 2013 to Use the Privacy Backlash in the Media as Justification to Wipe Out 40,000 Competitive or Potentially Competitive Applications

Given the untenable situation Zuckerberg's reciprocity policy created where Facebook was treating data it had made publicly available as if it had been privatized, Facebook needed to clean up this mess once its mobile ads business was on a strong footing. In 2013, Zuckerberg decided to hide the scheme to trade friend data for mobile ad purchases behind a public announcement of an unrelated project revamping Facebook's Login tool to better promote user privacy. The top Facebook Platform executives, Vernal and Purdy, attempted aggressively during this time to make Ilya Sukhar, the founder and CEO of Parse, the front man for this fraudulent narrative given his stellar reputation in the developer community. Par. 85. Sukhar initially resisted because he knew Facebook's scheme was unethical and malicious. Par. 85. However, by late 2013, Sukhar gave in to Zuckerberg, Vernal and Purdy and began overseeing

the development and dissemination of a fraudulent narrative to cover up the scheme. Par. 85, 223. This narrative took full advantage of the media's recognition of the substantial privacy issues that Facebook had created with its management of Facebook Platform and successfully steered the narrative towards blaming bad developers and positioning Facebook's role as simply being too slow to respond.

In early 2014, Zuckerberg, Sukhar and others agreed on a plan to announce publicly in April 2014 that friend data and other developer APIs were being shut down completely. This plan was designed to take advantage of the privacy issues in the media to shut down 40,000 potentially competitive applications after Facebook had closely monitored and placed bets on the companies it thought would be winners in its two most important consumer markets beyond social networking: messaging and photo/video sharing (Facebook bet on Instagram in photos and WhatsApp in messaging, hence those purchases in 2012 and 2014, respectively). Par. 162, 227. By wiping out access to data to all other apps in messaging and photo/video sharing, Facebook positioned Instagram, WhatsApp and its own Facebook Messenger perfectly to experience rapid growth, which in fact resulted immediately after these anti-competitive restrictions were implemented. The justification for wiping out 40,000 software applications centered on two issues: (1) user trust and privacy; and (2) the fact that the APIs were "rarely used". Par. 10, 137, 139, 223, 224. The "rarely used" argument is patently false as the APIs being removed were the most popular and widely used APIs on Platform. Par. 223, 224. The first justification around user trust stems from research Facebook had conducted regarding a revamp of its Login product where users can login to a developer's app using their Facebook account information. Par. 223. Facebook had obtained data indicating that a portion of users wanted to be able to approve specific permissions they granted to developers, and so Facebook decided to cloak these entirely unrelated API privatizations behind the revamp of this Login product in order to take advantage of the "user trust" narrative. Par. 224. In fact, that Facebook was shutting down friend data received only a single line at the end of the [April 30, 2014 announcement](#): "In addition to the above, we are removing several rarely used API endpoints; visit our changelog for details." This was the only description for the most significant change to Facebook Platform in its 8-year existence.

One would expect that if Facebook's motivations were around user trust and privacy that it would have put this announcement front-and-center. Further, one would have expected that in response to the 2012 FTC Order stating that Facebook had misled users that their privacy settings did not apply to apps downloaded by their friends, that Facebook would have taken some very simple measures to ensure that privacy violations like Cambridge Analytica could never happen. These include: (1) incorporating privacy settings for apps others use directly into the main privacy settings page and making clear to users that those privacy settings apply to "friend data" as well; (2) passing along privacy settings on data Facebook sends to developers via Facebook Platform APIs, which Facebook never did notwithstanding employees reported this glaring privacy issue for years, even prior to the FTC Order; and (3) making the default setting for a third party's ability to access user data turned to "off" rather than "on". This way a user would have to go into their privacy settings and proactively choose to allow third parties to access their data for apps their friends download. These are simple, obvious technical measures to respect user privacy that Facebook should have taken well before the FTC complaint in 2011 and certainly should have taken immediately after the FTC Order in 2012. Facebook never

implemented any of these simple measures precisely because it would limit the amount of valuable data it could funnel to other companies, which would have dramatically reduced Facebook's leverage in convincing them to buy unrelated mobile ads or to otherwise reciprocate financially.

Instead, Facebook deployed a public relations team specifically on this Graph API 2.0 announcement in April 2014 to feed reporters false information and to shift the focus of the announcement to its new Login product in the hope that the API restrictions would receive less attention; in fact, Facebook even drafted reporters' stories themselves in certain cases. Par. 129. The Facebook public relations machine worked, and until now Facebook has not been held to account for its own gross abuse of its Platform. The publicly announced reasons for Graph API 2.0 played absolutely no role in the internal discussions where the API restrictions were decided upon and implemented. Par. 10. The sole and exclusive criterion in those discussions was the ability to funnel user data to companies willing to buy unrelated mobile ads and the competitive nature of the company relative to Facebook's future products (even products Facebook had not begun building). Par. 4, 88, 91, 123. Facebook entered into many whitelist agreements where it traded this friend data for unrelated mobile ad purchases. Par. 223. Facebook managed a list of these companies, and in particular those who were friends with Zuckerberg or Sandberg, to enable them to have this special access to APIs (including over a dozen APIs that transmitted friend data) that Facebook claimed were removed to all companies, but instead were merely privatized in the service of Facebook's mobile ads business. Par. 223.

“Baiting and Switching” Third Parties to Build Facebook’s Ecosystem Is Happening Again With Facebook Messenger Platform

A key part of Zuckerberg's playbook is using platform economics to entice third parties to help build his business and then take deceptive actions so Facebook can unjustly reap most of that benefit itself. Par. 141-146. Another key aspect of Zuckerberg's playbook is to rely on “user trust, control or privacy” as cover stories for virtually all of Facebook's conduct. However, the conduct of Facebook's top executives from 2012 to 2015, in particular Zuckerberg and Olivan, undermines entirely any justification that Facebook made the Graph API 2.0 changes out of respect for user control or privacy. This is not only because the narrative tying the Login changes to the “rarely used” APIs Facebook restricted doesn't hold up to logical scrutiny, but also because numerous other actions that Facebook purported to be taking at this time out of respect for users seem to have nefarious motives. Par. 226-234.

For instance, in 2012 and 2013, Olivan oversaw a project to track the content and metadata of phone calls and texts on Android phones. Par. 228. Facebook disclosed publicly that it was reading limited information from texts in order to authenticate users more easily, but Olivan collected more information than was required to accomplish this purpose and used this information to enhance certain core features of Facebook that gave it an unfair competitive advantage relative to other applications. Par. 228. Facebook did not accurately state the type of information it was accessing, the timeframe over which it accessed it, and the ways it used the information. Par. 228. Facebook was also collecting this information from non-Facebook users who texted with Facebook users. These people obviously never consented to Facebook reading their text messages. Par. 228.

Further, for a “certain prominent feature” of the Facebook website, Facebook deliberately and by design ignored users’ privacy settings without disclosing this to its users. Par. 229. Facebook also turned on the Bluetooth setting on users’ phones without disclosing accurately the ways in which it would use the Bluetooth location data. Par. 230. Facebook also caused a certain user privacy setting to lapse after a certain period of time without notifying users of the lapse. Par. 231. Facebook also deliberately and by design failed to pass age and privacy settings through its developer APIs, making it extremely difficult for developers to respect age and user privacy requirements. Par. 232. Further, it appears that in 2015 Facebook expanded its program to access and monitor the microphone on Android phones without securing the explicit consent of its users and while only providing partial disclosures as to what information was being collected and how it was being used. Par. 233. Finally, it appears that Facebook has not fully disclosed the ways in which it accesses and analyzes photos taken on iPhones. If a user has any Facebook app installed on their iPhone, Facebook preprocesses and runs machine learning on these photos without fully disclosing what information it gleans from the photos and how it uses that information. Par. 233.

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14 COUNTY OF SAN MATEO

15 SIX4THREE, LLC, a Delaware limited
liability company,

16 Plaintiff,

17 v.

18 FACEBOOK, INC., a Delaware
corporation;
19 MARK ZUCKERBERG, an individual;
CHRISTOPHER COX, an individual;
20 JAVIER OLIVAN, an individual;
SAMUEL LESSIN, an individual;
21 MICHAEL VERNAL, an individual;
ILYA SUKHAR, an individual; and
22 DOES 1 through 50, inclusive,

23 Defendants.
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FILED
by Superior Court of California, County of San Mateo
ON 5/18/2018
By /s/ Crystal Swords
Deputy Clerk

) Case No. CIV 533328
)
)

) **Assigned For All Purposes To Hon. V.**
) **Raymond Swope, Dept. 23**
)

) **CORRECTED MEMORANDUM OF**
) **POINTS AND AUTHORITIES IN**
) **OPPOSITION TO DEFENDANTS'**
) **SPECIAL MOTIONS TO STRIKE**
) **(ANTI-SLAPP)**

) REDACTED FOR PUBLIC FILING
)

) HEARING DATE: July 2, 2018
)

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) DEPARTMENT: 23
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) JUDGE: Hon. V. Raymond Swope
)

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TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
I. ARGUMENT	1
A. The Commercial Speech Exemption Applies	1
B. Plaintiff Is Likely to Prevail On Its Section 17200 Claim	1
C. Plaintiff Is Likely to Prevail On Its Remaining Claims	14
II. CONCLUSION	15

TABLE OF AUTHORITIES

CASES

Page

<i>Daugherty v. American Honda Motor Co., Inc.</i> , (2006) 144 Cal.App.4th 824	13
<i>In re Tobacco II Cases</i> , (2009) 46 Cal.4th 298	13-14
<i>Scripps Clinic v. Superior Court</i> , (2003) 108 Cal.App.4th 917, 940	13
<i>Smith v. State Farm Mutual Automobile Ins. Co.</i> , (2001) 93 Cal.App.4th 700	13

STATUTES

Bus. & Prof. Code, § 16727	13-14
Bus. & Prof. Code, § 17200	1, 13
Cal. Code Civ. Proc. § 425.17.....	1, 15

OTHER AUTHORITIES

California Civil Jury Instructions (CACI) (2017) No. 303.....	14
California Civil Jury Instructions (CACI) (2017) No. 1900.....	14
California Civil Jury Instructions (CACI) (2017) No. 1901	14
California Civil Jury Instructions (CACI) (2017) No. 1903	14
California Civil Jury Instructions (CACI) (2017) No. 2201	15
California Civil Jury Instructions (CACI) (2017) No. 3421	14

1 **I. ARGUMENT**

2 **A. The Commercial Speech Exemption Applies**

3 Plaintiff incorporates the arguments raised in its oppositions to Facebook’s Anti-SLAPP
4 Motion, including the applicability of the commercial speech exemption of Cal. Code Civ. Proc.
5 § 425.17(c) and the unprecedented untimeliness in asserting the Anti-SLAPP argument.¹

6 **B. Plaintiff Is Likely to Prevail on Its Section 17200 Claim**

7 Plaintiff has demonstrated that Zuckerberg and Facebook baited tens of thousands of
8 software companies with specific affirmative representations and partial disclosures of fact from
9 2007 to 2014 to induce them to invest capital and labor in building businesses on Facebook
10 Platform, which was critical to Facebook’s rapid growth from 20 million users in 2007 to over
11 two billion users today, including representations that Facebook Platform would: (1) operate as an
12 open and neutral platform to ensure a level competitive playing field for participating companies
13 (“developers”), both with respect to one another and Facebook; (2) maintain controls and
14 procedures that would ensure user privacy and enable developers who relied upon Facebook
15 Platform to do the same; (3) enforce such policies around user data and privacy in a neutral
16 manner and without regard for the amount of advertising a developer purchased from Facebook;
17 (4) provide an opportunity for companies to build stable businesses; (5) provide equal and neutral
18 access to Facebook’s Graph APIs, including the APIs relied upon by Plaintiff (User ID API, Full
19 Friends List API, Friends Permissions APIs and Newsfeed APIs), while at all times respecting the
20 privacy of user data and the right of a user to own and control her own data; and (6) enable
21 companies to grow their businesses by leveraging Facebook’s graph for organic user growth.²

22 ¹ See Plaintiff’s Opposition to Facebook’s Special Motion to Strike (Anti-SLAPP) filed on
23 December 12, 2017, Plaintiff’s Supplemental Opposition to Facebook’s Special Motion to Strike
24 (Prong 1) filed on January 24, 2018, Plaintiff’s Reply to Defendant’s Supplemental Memorandum
25 in Support of Anti-SLAPP Motion (Prong 1) filed on March 7, 2018, and Plaintiff’s Supplemental
26 Memorandum of Points and Authorities in Opposition to Special Motions to Strike (*Newport Harbor*) filed on May 3, 2018. Declaration of David S. Godkin In Support of Plaintiff’s Request for Judicial Notice (“Jud. Not. Dec.”), ¶¶ 214-217, Exs. 213-216.

27 ² Declaration of David S. Godkin In Opposition to Anti-SLAPP Motions (“Dec.”), ¶ 2, Ex. 1, at
28 82:7-85:20; ¶ 3, Ex. 2, at 45:16-56:08, 75:21-79:20, 167:9-168:20; ¶ 4, Ex. 3, at 32:2-22, 73:7-
74:20, 78:25-81:25; ¶ 5, Ex. 4, at 60:9-61:25; ¶¶ 11-14, Exs. 10-13; ¶ 181, Ex. 181. Jud. Not. Dec.,
¶¶ 3-6, 9, 10, 13, 14, 54-61, 67, 68, 74, 75 (Exs. 2-5, 8, 9, 12, 13, 53-60, 66, 67, 73, 74) (“We’re

1 These affirmative representations and partial disclosures were widely known in the consumer
2 software industry, and because of these statements, many companies decided to build their
3 businesses on Facebook Platform. Dec., ¶ 3, Ex. 2, at 90:6-92:14; ¶ 4, Ex. 3, at 21:1-22, 53:22-
4 54:17; ¶ 7, Ex. 6, 360:2-25; ¶ 76, Ex. 75. Facebook made these representations and partial
5 disclosures with the specific intent to induce companies to rely on Facebook Platform, which
6 greatly benefited Facebook.³ Plaintiff relied on these representations and partial disclosures when
7 deciding to build its business on Facebook Platform. Dec., ¶ 9, Ex. 8, at 115-117; ¶ 10, Ex. 9, at
8 252. At no time did Facebook manage its Platform as a level competitive playing field that
9 respected user privacy; instead, unbeknownst to Plaintiff, Facebook and its senior executives
10 willfully, maliciously and arbitrarily violated these representations and failed to disclose facts that
11 materially undermined them in order to leverage its Platform as a weapon to unjustly enrich
12 Facebook and its senior executives by willfully violating the privacy of Facebook users and
13 architecting a scheme to blame developers for Facebook's own repeated privacy violations.⁴

14 Facebook architected its Platform in a manner designed to violate user privacy as early as
15 2009, which entailed: (1) separating the privacy settings for data a user shared with friends in
16 apps the user downloaded ("user data") with the privacy settings ("Apps Others Use" settings)
17 for data the user shared with friends in apps the friends downloaded ("friend data") (Jud. Not.
18 Dec., ¶ 32, Ex. 31, Federal Trade Commission Complaint, at 4-7); (2) hiding the Apps Others
19 Use settings to ensure most Facebook users were not aware that these settings were distinct from
20 the main privacy settings (*Id.*, at 4-9); (3) making the default setting for sharing data with Apps

21 very optimistic that if you were choosing to develop a service, you would choose to do with us.
22 We really consider ourselves a partnership company. And that means that we want to take social
23 companies and make them big, and big companies and make them social, because we think
24 bringing what Facebook provides, which is your friends, makes every service better" (Sheryl
Sandberg, July 26, 2012 Quarterly Earnings Call, Ex. 57)).

25 ³ Dec., ¶ 2, Ex. 1, at 125:7-130:14, 268:6-272:4; ¶ 3, Ex. 2, at 188:23-189:15; ¶ 4, Ex. 3, at 21:23-
26 22:2, 28:8-22, 40:14-41:14, 59:2-61:4; ¶¶ 15-17, Exs. 14-16. Jud. Not. Dec., ¶¶ 54-61 (Exs. 53-
60).

27 ⁴ Dec., ¶ 3, Ex. 2, at 99:11-120:4, 125:19-131:20; ¶ 18, Ex. 17; ¶ 139, Ex. 138; ¶ 172, Ex. 172; ¶¶
28 177-180, Exs. 177-180; ¶ 188, Ex. 188; ¶ 197, Ex. 197.

1 Others Use set to “on” so Facebook could funnel more data to developers under the guise of user
2 consent (*Id.*, at 7-11); and (4) deliberately failing to pass privacy settings for data transmitted to
3 developers via Facebook’s APIs, signaling to developers that all friend data was public and could
4 be treated as such. Dec., ¶ 117, Ex. 116; ¶¶ 155-157, Exs. 155-157; ¶ 174, Ex. 174; ¶ 191, Ex.
5 191; ¶ 192, Ex. 192; ¶¶ 194-196, Exs. 194-196. Jud. Not. Dec., ¶¶ 29-36, 177 (Exs. 28-35, 176).
6 Facebook did not comply with the FTC Order to eliminate this artificial distinction between
7 “user data” and “friend data” that allowed Facebook to funnel friend data *en masse* to developers
8 without concern for privacy restrictions. To address the FTC Order, all Facebook had to do was:
9 (1) combine the privacy settings for apps downloaded by a user and apps downloaded by the
10 user’s friends in the main privacy page (instead of hiding the Apps Others Use page); (2) change
11 the default data-sharing setting from “on” to “off”; and (3) include the privacy setting of a piece
12 of data when sending that data to developers through its APIs. Instead, Facebook shirked the
13 FTC order by expanding upon its intentionally flawed privacy design more urgently than ever to
14 ensure Facebook had a valuable trading tool that would convince developers to make entirely
15 unrelated purchases in Facebook’s new mobile advertising product, which saved Facebook’s
16 business from collapsing in late 2012 and early 2013. In short, Zuckerberg weaponized the data
17 of one-third of the planet’s population in order to cover up his failure to transition Facebook’s
18 business from desktop computers to mobile ads before the market became aware that Facebook’s
19 financial projections in its 2012 IPO filings were false. Jud. Not. Dec., ¶¶ 37, 82, 96 (Exs. 36, 81,
20 95). The flawed design also enabled Facebook to state in 2014 that a user could not consent to
21 share data with friends in any app other than Facebook – a remarkable claim since Facebook held
22 the exact opposite position for seven years – but one that served as a convenient privacy-focused
23 excuse to eliminate competitors to its new products in video, photo, messaging, contact
24 management, e-commerce, payments, and now dating.⁵

25 Zuckerberg’s scheme made it impossible for Plaintiff’s business and thousands of other
26 businesses to succeed on Facebook Platform and directly resulted in the widely reported scandal
27 in which a developer, Cambridge Analytica, used Facebook data to influence the 2016

28 ⁵ Dec., ¶ 120, Ex. 119; ¶ 133, Ex. 132; ¶ 160, Ex. 160. Jud. Not. Dec., ¶ 53, 201 (Exs. 52, 200).

1 Presidential election allegedly on behalf of the Russian government.⁶ The evidence uncovered by
2 Plaintiff demonstrates that the Cambridge Analytica scandal was not the result of mere
3 negligence on Facebook's part, but was rather the direct consequence of the malicious and
4 fraudulent scheme Zuckerberg designed in 2012 to cover up his failure to anticipate the world's
5 transition to smartphones. This scheme caused so much internal chaos at Facebook [REDACTED]

6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED] Dec., ¶¶ 153, 154,
10 Exs. 153, 154. [REDACTED]

11 [REDACTED] constitutes a far greater abuse than the Cambridge Analytica matter being investigated
12 by federal and state authorities in which 87 million consumers had their data transferred to
13 Russian entities. This conduct implicates the rights of one-third of the world's population, and
14 yet remains shrouded from public view. Jud. Not. Dec., ¶¶ 90, 111 (Exs. 89, 110).

15 At least by 2012, Zuckerberg personally oversaw a practice to weaponize Platform APIs,
16 including a wide range of user and friend data, by inducing companies to rely on this data and
17 then threatening to remove access unless these companies made exorbitant purchases in
18 Facebook's nascent mobile advertising product, known internally as "Neko" ads and publicly as
19 "Mobile App Install" ads. Jud. Not. Dec., ¶¶ 7, 8, 77, 78 (Exs. 6, 7, 76, 77). Zuckerberg
20 blacklisted any companies that refused to buy these Neko ads in exchange for continued access
21 to data that Facebook claimed for years was publicly available at no charge. This blacklisting
22 practice also applied to companies that Zuckerberg in his sole discretion considered competitive
23 with current or future Facebook products, even products Facebook had not yet built, and
24 notwithstanding that most of these developers operated entirely within Facebook's rules.⁷

25 ⁶ Jud. Not. Dec., ¶¶ 24-28, 108, 110, 113, 114, 116, 134, 141, 143, 155, 158, 163, 164, 167-170,
26 175, 176, 181-186, 188, 190, 192, 194-198, 200, 201 (Exs. 23-27, 107, 109, 112, 113, 115, 133,
27 140, 142, 154, 157, 162, 163, 166-169, 174, 175, 180-185, 187, 189, 191, 193-197, 199, 200).

28 ⁷ Dec., ¶ 2, Ex. 1, at 177:14-181:20, 195:18-199:7, 231:25-233:18, 257:20-258:14; ¶ 5, Ex. 4, at
79:14-84:17, 139:13-145:13, 163:1-167:19; ¶¶ 19-26, Exs. 18-25; ¶¶ 42-45 Exs. 41-44; ¶ 165, Ex.

1 Zuckerberg's decision to weaponize a platform economy that Facebook represented for
2 years as open, fair and neutral stemmed from a simple fact that by 2012 had devastating
3 consequences for Facebook: people began accessing the Internet primarily from their phones, but
4 Facebook had built its advertising business for desktop computers, which caused Facebook's
5 revenues and stock price to plummet. Facebook lost over \$200 million in the second and third
6 quarters of 2012 because it had no mobile advertising business.⁸ By mid-2012, Facebook's most
7 senior executives⁹ explored ways to leverage the fact that hundreds of thousands of companies
8 relied on Facebook Platform in order to reboot its business for smartphones, presenting various
9 options for restricting public Platform APIs to its Board of Directors in August 2012, including:

10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]. Dec., ¶¶

18 32-41, Exs. 31-40; ¶ 159, Ex. 159; ¶ 193, Ex. 193. In November 2012, after many months of
19 discussion, Zuckerberg made his final decision to implement a version of the reciprocity policy
20 called "full reciprocity," instead of implementing a public pricing program like Twitter or a
21 revenue share model like the neutral platforms operated by Apple and Google - the top Platform

22 165.

23 ⁸ In mid-2012, mobile advertising accounted for 0% of Facebook's total revenues and yet today, as
24 a direct result of the scheme at the heart of Plaintiff's complaint, mobile advertising makes up
25 approximately 90% of Facebook's total revenues. This has been referred to as one of the most
26 "mindblowing" growth trajectories of any business in history. Dec., ¶¶ 26-31, Exs. 25-30; ¶ 152,
Exs. 151-152. Jud. Not. Dec., ¶¶ 37-43, 56, 58, 62-66, 69-72, 82, 96-98, 178, 197 (Exs. 36-42, 55,
57, 61-65, 68-71, 81, 95-97, 177, 196).

27 ⁹ The executives involved in these discussions in 2011 and 2012 include but are not limited to:
28 Zuckerberg, Olivan, Cox, Lessin, Sandberg, Bosworth, Rose, Ebersman, Welner, Stretch, Badros
and Fischer. *See, e.g.*, Dec., ¶ 48, Ex. 47 (FB-00917792).

1 executive, Vernal, referred to this decision as [REDACTED] outside Zuckerberg's presence.¹⁰

2 Zuckerberg's full reciprocity policy caused Facebook's privacy and policy apparatus to
3 disintegrate in favor of an arbitrary enforcement environment in which Facebook offered user
4 data, and in particular friend data, to certain developers that were willing to reciprocate with
5 Facebook, typically by agreeing to purchase no less than \$250,000 per year in unrelated Neko
6 ads, while other developers that Facebook considered competitive were blacklisted from
7 accessing this data even though they never broke any rules or violated anyone's privacy.

8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED] Dec., ¶¶ 50-52, Exs. 49-51, Facebook
12 publicly announced an intentionally vague reciprocity policy in January 2013 that refused to
13 define a "competitive" service or "core functionality" in order to mislead companies into
14 thinking that only online social networks (e.g. MySpace, LinkedIn) would be considered
15 competitive; but Facebook's internal definition of a competitive service included virtually every
16 kind of consumer application, including those Facebook explicitly induced in its reciprocity
17 announcement to continue using APIs it had already decided to shut down. Dec., ¶ 53, Ex. 52.
18 Jud. Not. Dec., ¶¶ 10, 11, 12, 73 (Exs. 9, 10, 11, 72).¹¹ This enabled Facebook to use its policies
19 as an excuse to eliminate any developer for any reason whatsoever. Dec., ¶¶ 53-54, Exs. 52-53.

20 ¹⁰ Dec., ¶ 2, Ex. 1, at 136:18-144:7, 148:11-149:16, 151:6-153:10, 168:5-169:1, 177:14-181:20; ¶
21 5, Ex. 4, at 86:4-93:16, 102:7-103:14; ¶¶ 46-52, Exs. 45-51; ¶ 67, Ex. 66; ¶ 173, Ex. 173.

22 ¹¹ Facebook has claimed in two sets of verified discovery responses that it never had a reciprocity
23 policy and that no documents with the term "reciprocity" exist in its files, notwithstanding that its
24 public announcement of the reciprocity policy is readily available on the Internet and Facebook
25 has produced hundreds of emails that discuss this reciprocity policy. Jud. Not. Dec., ¶ 10, Ex. 9
26 (before the announcement of the reciprocity policy, section I.10 of Facebook Platform Policies,
27 part of the adhesion contract Plaintiff entered into with Facebook, stated: "Competing social
28 networks: (a) You may not use Facebook Platform to export user data into a competing social
network"); ¶ 11, Ex. 10 (on January 25, 2013, Facebook announces the reciprocity policy as an
update to section I.10, stating that "the vast majority of developers building social apps" should
"keep doing what you're doing," and that this applies to "music, fitness, news and general lifestyle
apps," but that a "much smaller number of apps" are trying to "replicate our functionality" and
Facebook has "had policies against this that we are further clarifying today," linking to the new

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Dec., ¶ 175, Ex. 175.

Dec., ¶ 2, Ex. 1, at 204:12-209:16; ¶¶ 55-57, Exs. 54-56; ¶ 176, Ex. 176.

13

Dec., ¶ 2, Ex. 1, at 252:2-254:13; ¶ 62, Ex. 61.

I.10 section); ¶ 12, Ex. 11 (the new I.10 section reads: “Reciprocity and Replicating core functionality: (a) Reciprocity: Facebook Platform enables developers to build personalized, social experiences via the Graph API and related APIs. If you use any Facebook APIs to build personalized or social experiences, you must also enable people to easily share their experiences back with people on Facebook. (b) Replicating core functionality: You may not use Facebook Platform to promote, or to export user data to, a product or service that replicates a core Facebook product or service without our permission.”); ¶ 203, Ex. 202, at 4-12 (Facebook’s Supplemental Response to Plaintiff’s Third Demand for Production: “Facebook states that it does not have a ‘data reciprocity policy,’ and no such documents and communications exist” that contain the terms “data reciprocity” or “reciprocity”); ¶ 73, Ex. 72 (media reports on Facebook’s announcement of the reciprocity policy in January 2013).

¹² Dec., ¶ 2, Ex. 1, at 86:4-93:16, 151:6-153:10, 168:5-169:1, 204:12-209:16, 226:2-228:3; ¶ 46, Ex. 45; ¶¶ 58-60, Exs. 57-59.

¹³ Dec., ¶ 4, Ex. 3, at 14:25-15:14, 65:3-25, 70:2-71:13, 82:8-94:1, 96:15-108:16; ¶¶ 60-61, Exs. 59-60; ¶¶ 202-204, Exs. 202-204. Jud. Not. Dec., ¶¶ 14-20, 56, 58 (Exs. 13-19, 55, 57).

1 [REDACTED]
2 Plaintiff would not have built its business on Facebook Platform and Cambridge Analytica
3 would not have used Facebook data to steer the election towards Donald Trump. Put simply,
4 Zuckerberg did not anticipate how quickly people would start using phones to access the
5 Internet, so he took desperate, fraudulent measures to save his failing ads business in 2012.

6 The “full reciprocity” policy was unworkable as an actual policy but was extremely
7 effective as a ‘get out of jail free’ card by giving Facebook: (1) an excuse to threaten to or
8 actually shut down certain developers unless they purchased mobile ads or provided other
9 consideration Facebook deemed valuable in its sole discretion; (2) the ability to blame
10 developers for privacy violations related to data Facebook chose to funnel to developers without
11 any privacy controls; and (3) cover to continue to induce developers to rely on the very APIs
12 Zuckerberg had decided to privatize in 2012 in order to gain more leverage.¹⁴ Under cover of the
13 full reciprocity policy, the Growth team (Olivan) illegally accessed non-public information about
14 competitive applications in order to monitor their popularity and then directed the Platform team
15 (Vernal) to shut down an application once it became widely used.¹⁵ By early 2013, armed with
16 an official reciprocity policy vague enough for Zuckerberg to consider any company a criminal,
17 the initial pay-to-play tests began paying off as Neko ads grew faster than anyone’s wildest
18 expectations. Dec., ¶ 158, Ex. 158; ¶ 164, Ex. 164. In light of this success, [REDACTED]

19 [REDACTED]
20 [REDACTED] Dec., ¶ 75, Ex. 74; ¶¶ 166-167, Ex. 166-167. [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]

24 ¹⁴ Dec., ¶ 2, Ex. 1, at 168:5-169:1, 214:13-217:11, 228:9-232:5; ¶¶ 63-68, Exs. 62-67; ¶¶ 168-171,
25 Ex. 168-171; ¶ 173, Ex. 173.

26 ¹⁵ Olivan accomplished this by monitoring apps installed on the phones of 30 million people who
27 had installed Onavo, a virtual private network app that Facebook bought in 2013; Olivan was able
28 to track highly sensitive information about at least 82,000 software applications as a result of
violating the privacy of these 30 million people. Dec., ¶ 2, Ex. 1, at 52:9-53:12; ¶¶ 69-73, Exs. 68-
72; ¶¶ 147-150, Exs. 146-149. Jud. Not. Dec., ¶¶ 100, 139, 142 (Exs. 99, 138, 141).

1 [REDACTED] Dec., ¶ 23, Ex. 22; ¶ 161, Ex. 161. [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED] Dec., ¶ 74, Ex. 73.¹⁶ [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED] Dec., ¶ 5,
13 Ex. 4, at 191:22-193:14, 222:23-226:16; ¶¶ 76-79, Exs. 75-78.
14 Beginning in September 2013, [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED] Dec., ¶ 5, Ex. 4, at 218:22-
19 219:19; Dec., ¶¶ 80-82, Exs. 79-81; ¶¶ 189-190, Exs. 189-190.¹⁸ By December 2013, [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED] Dec., ¶ 5, Ex. 4, at 298:10-306:7.
24 ¹⁷ Dec., ¶ 4, Ex. 3, at 134:13-135:20, 145:03-150:12; Dec., ¶ 6, Ex. 5, at 153:14-154:24, 161:12-
177:20; Dec., ¶¶ 75-76, Exs. 74-75.
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED] Facebook broke Tinder's app as
recently as April 2018, and then announced it was building its own dating apps to compete with
Tinder on May 1, 2018. Dec., ¶ 85, Ex. 84; ¶ 98, Ex. 97; ¶ 103, Ex. 102; ¶ 190, Ex. 190; ¶ 192, Ex.

Dec., ¶ 83, Exs. 82.

the ones Cambridge Analytica and Russia used to steer the 2016 Presidential election towards Donald Trump). Dec., ¶ 4, Ex. 3, at 187:13-188:16; ¶ 5, Ex. 4, at 183:11-184:16, 227:13-230:22; ¶ 101, Ex. 100. Facebook employees

Dec., ¶ 4, Ex. 3, at 160:06-

162:18; ¶ 81, Ex. 80; ¶ 102, Ex. 101.

Dec., ¶ 10, Ex. 9, at 199:1-206:18; ¶¶ 103-104, Ex. 102-103

Dec., ¶¶ 105-111, Ex. 104-110.

Dec., ¶¶ 112-113, Ex. 111-112.

192; ¶¶ 199-201, Ex. 199-201. Jud. Not. Dec., ¶ 85, 86, 201 (Exs. 84, 85, 200).

¹⁹ Dec., ¶ 4, Ex. 3, at 57:21-58:4, 167:25-178:05, 196:14-199:8, 201:10-203:13, 218:8-219:18; ¶ 5, Ex. 4, at 238:2-242:17, 243:7-252:5; ¶ 7, Ex. 6, at 121:3-127:1, 172:18-176:4; ¶¶ 84-100, Exs. 83-99.

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[REDACTED]

[REDACTED] Dec., ¶ 111, Ex. 110; ¶ 114, Ex. 113; ¶ 151, Ex. 150

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Dec., ¶¶ 115-117, Ex. 114-116; ¶

212, Ex. 212. In the second half of 2013, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Dec., ¶¶ 118-

122, Ex. 117-121; ¶ 182, Ex. 182; ¶ 187, Ex. 187; ¶ 198, Ex. 198; ¶¶ 205-211, Exs. 205-211.

The fraudulent narrative was known internally as the [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] 20

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Dec., ¶¶ 123-130, Ex. 122-129; ¶ 133, Ex. 132; ¶

160, Ex. 160. Jud. Not. Dec., ¶ 53 (Ex. 52).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Dec.. ¶¶ 127-128. Exs. 126-127.

1 [REDACTED]
2 [REDACTED]
3 [REDACTED] Dec., ¶¶ 131-132, Ex.
4 130-131.²¹ Zuckerberg’s April 30, 2014 public announcement of the API restrictions and
5 Facebook’s official blog post continued to misrepresent material facts and conceal facts that
6 undermined the facts disclosed, including: (1) concealing the specific APIs being restricted and
7 instead representing falsely that some “rarely used” APIs were being deprecated, [REDACTED]
8 [REDACTED]
9 [REDACTED] Dec., ¶ 4, Ex. 3, at 53:15-21, 61:11-62:13, 207:21-209:12; ¶ 5, Ex. 4,
10 at 25:6-28:25; 119:7-16, 151:21-152:18; Dec., ¶¶ 133-135, Ex. 132-134; ¶ 162-163, Ex. 162-163;
11 (2) [REDACTED]
12 [REDACTED] Dec., ¶ 136, Ex. 135; and (3)
13 [REDACTED] Dec., ¶¶
14 137-138, Ex. 136-137. Facebook’s defense that the API restrictions were implemented
15 exclusively to protect user trust and privacy is plainly false as: (1) the Login revamp applied only
16 to apps downloaded by *that user*, whereas the anti-competitive API restrictions applied to apps
17 downloaded by that user’s friends; (2) a user already had the ability for many years to control
18 whether their friends could access the user’s data in third-party applications, but Facebook hid
19 these controls and set the default to “on” in order to fabricate consent; and (3) [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]; [REDACTED]

25 ²¹ After shutting down many competitive apps, Facebook quickly begins to dominate a wide range
26 of new markets, including video, local commerce, payments, messaging, and much more, such
27 that 4 of the top 5 apps worldwide quickly become Facebook apps and venture capital funding in
28 consumer software startups plummets. Jud. Not. Dec., ¶¶ 76, 79, 89, 99, 102, 105, 106, 109, 112,
117, 118, 120, 128-130, 138, 144-149, 165, 166 (Exs. 75, 78, 88, 98, 101, 104, 105, 108, 111, 116,
117, 119, 127-129, 137, 143-148, 164, 165).

1 [REDACTED]
2 [REDACTED]²² Zuckerberg's
3 2012 scheme to weaponize data as a way of gaining leverage over developers in order to force
4 them to buy mobile ads resulted in countless privacy issues reported by the media, which
5 Facebook remarkably used as cover to shut down developers that had always abided by the
6 rules.²³ In other words, Facebook was able to unjustly enrich itself both from the 2012-2014 pay-
7 to-play scheme that saved its advertising business *and* from the inevitable privacy violations the
8 scheme caused! Facebook reaped the benefits of transitioning its ads business to phones *and*
9 wiping out competition to make room for a wide range of new Facebook products.

10 Plaintiff has demonstrated that defendants' conduct violates all three prongs of Section
11 17200. Defendants' conduct violates the "unfair" prong under any of the three standards as
12 defendants represented a fair and open platform and then enriched themselves by maliciously,
13 unethically, oppressively and punitively operating a closed platform that took advantage of the
14 reasonable reliance of millions of consumers and tens of thousands of companies to their
15 substantial detriment and with no countervailing benefit.²⁴ Defendants' conduct violates the
16 "unlawful" prong as the bait and switch scheme triggers a variety of predicate violations,
17 including common law tort and fraud, California's misrepresentation and concealment statutes,
18 California's false advertising law, and the July 27, 2012 FTC Order directing that defendants'
19 "shall not misrepresent in any manner...the extent to which it maintains the privacy or security
20 of covered information."²⁵ Plaintiff has also met its burden on the "fraud" prong. *See In re*

21 ²² Dec., ¶ 2, Ex. 1, at 64:22-76:10, 120:23-121:18; ¶ 4, Ex. 3, at 94:3-95:12, 123:20-125:08,
22 127:02-127:25, 128:01-128:10, 129:06-131:23; ¶ 139, Ex. 138; ¶ 172, Ex. 172; ¶¶ 177-180, Exs.
23 177-180; ¶ 188, Ex. 188.

24 ²³ Jud. Not. Dec., ¶¶ 23, 76, 79, 87, 88, 100, 101, 104, 107, 115, 116, 123-125 131, 136, 139, 140-
25 143, 153-157, 159-162, 172-174, 179, 180, 189, 193, 199 (Exs. 22, 75, 78, 86, 87, 99, 100, 103,
106, 114, 120, 122-124, 130, 135, 138, 139-142, 152-156, 158-161, 171-173, 178, 179, 188, 192,
198).

26 ²⁴ *See Daugherty v. American Honda Motor Co., Inc.* (2006) 144 Cal.App.4th 824, 839; *Smith v.*
27 *State Farm Mutual Automobile Ins. Co.* (2001) 93 Cal.App.4th 700, 719; *Scripps Clinic v.*
Superior Court (2003) 108 Cal.App.4th 917, 940.

28 ²⁵ Jud. Not. Dec., ¶ 30, Ex. 29, at 3. Further, Zuckerberg's bait and switch scheme violates the
Cartwright Act as Facebook maliciously tied its Platform APIs (the tying product) to its Neko

1 *Tobacco II Cases* (2009) 46 Cal.4th 298, 312. An injunction is required as Facebook still induces
2 developers to build on its Platform by representing it as open and fair and has even extended its
3 Platform to Messenger using the same fraudulent playbook.²⁶

4 **C. Plaintiff Is Likely to Prevail on Its Remaining Claims**

5 Plaintiff has met its burden to prevail on its breach of contract action. CACI (2017) 303.
6 Facebook and Plaintiff entered into a standard adhesion contract, Facebook's December 2012
7 Statement of Rights and Responsibilities (SRR). Dec., ¶ 146, Ex. 145; ¶ 4, Ex. 3, at 35:2-23; ¶ 6,
8 Ex. 5, at 22:17-23:12; ¶ 7, Ex. 6, at 45:4-21, 57:4-63:5. Plaintiff performed all of its obligations.
9 Dec., ¶ 5, Ex. 4, at 17:15-21, 19:1-20:8, 23:15-25:5, 37:19-25. Facebook failed to perform by
10 refusing to provide "all rights to APIs, data and code" that Facebook made available and
11 breached the contract by violating its representations of open, equal and fair access to its APIs
12 that fraudulently induced Plaintiff and others to perform under the contract. Dec., ¶ 146, Ex. 145
13 (Section 9.8); ¶ 5, Ex. 4, at 38:13-40:21; ¶ 7, Ex. 6, at 45:4-21, 219:23-222:1. Plaintiff and many
14 others were harmed, and Facebook's breach was a substantial factor in the harm. Dec., ¶ 8, Ex. 7,
15 at 205:17-25; ¶ 7, Ex. 6, at 67:8-83:3, 98:10-99:4, 103:10-107:24; ¶ 3, Ex. 2, at 121:5-123:11.

16 Plaintiff has met its burden to prevail on its fraud claims. CACI (2017) 1900, 1901, 1903.
17 Defendants made numerous representations of fact to Plaintiff they knew to be false around
18 managing a level competitive playing field while intentionally and systematically tilting that
19 playing field in its favor to the detriment of tens of thousands of startups and small businesses.²⁷

20 advertising product (the tied product), which are entirely unrelated and distinct products. Facebook
21 refused to offer the Platform APIs unless companies purchased Neko advertising. Facebook had
22 sufficient economic power in the market for Platform APIs (it was the sole provider of these APIs)
23 to coerce companies into purchasing Neko advertising, and the tying arrangement prohibited an
24 estimated 40,000 companies from purchasing advertising (the tied product) as they no longer had
products to advertise. CACI (2017) 3421 (Bus. & Prof. Code, § 16727); Dec., ¶¶ 140-144, Ex. 139-143.

25 ²⁶ Dec., ¶ 6, Ex. 5, at 26:1-29:4, 42:17-45:10; ¶ 145, Ex. 144; ¶¶ 183-186, Ex. 183-186. Jud. Not.
26 Dec., ¶¶ 2, 21, 22, 80, 81, 83-86, 91-94, 103, 119, 122, 126, 127, 132, 133, 137, 138, 150-152, 171
(Exs. 1, 20, 21, 79, 80, 82-85, 90-93, 102, 118, 121, 125, 126, 131, 132, 136, 137, 149-151, 170).

27 ²⁷ Dec., ¶¶ 11-14, Exs. 10-13; ¶ 2, Ex. 1, at 82:7-85:20, 177:14-181:20, 195:18-199:7, 231:25-
28 233:18, 257:20-258:14; ¶ 3, Ex. 2, at 45:16-56:08, 75:21-79:20, 99:11-120:4, 125:19-131:20,
167:9-168:20; ¶ 4, Ex. 3, at 32:2-22, 73:7-74:20, 78:25-81:25; ¶ 5, Ex. 4, at 60:9-61:25.

1 Defendants intended that Plaintiff rely on the representations.²⁸ Plaintiff reasonably relied on the
2 representations.²⁹ Further, Facebook and Plaintiff were in a business relationship.³⁰ Facebook
3 disclosed some facts but intentionally failed to disclose others known only to Facebook while
4 preventing Plaintiff from discovering certain facts.³¹ Plaintiff did not know the concealing facts
5 and if they had been disclosed, Plaintiff would not have built its business on Facebook Platform.
6 Dec., ¶ 8, Ex. 7, at 162:13-163:16, 223:6-15. Plaintiff was harmed by this conduct.³²

7 Plaintiff has met its burden to prevail on its intentional tort action. CACI (2017) 2201.
8 Plaintiff maintained contracts with its users. Dec., ¶ 8, Ex. 7, at 181:23-183:9, 195:25-196:16.
9 Facebook knew of these contracts as its SRR required them. Dec., ¶ 6, Ex. 5, at 49:18-50:5.
10 Facebook knew it would disrupt and intended to disrupt Plaintiff's contracts because Plaintiff
11 was included in the list of 40,000 apps audited in 2013 and 2014 that would break as a result of
12 Zuckerberg's scheme. Dec., ¶ 6, Ex. 5, at 174:7-177:20; Dec., ¶ 4, Ex. 3, at 55:21-56:17, 122:14-
13 123:06, 231:18-233:24; Dec., ¶ 7, Ex. 6, at 108:1-111:13. Facebook's conduct prevented
14 Plaintiff from performing in its contracts with its users. Dec., ¶ 8, Ex. 7, at 162:13-163:16, 223:6-
15 15. Plaintiff was harmed by this conduct. Dec., ¶ 8, Ex. 7, at 205:17-25; ¶ 10, Ex. 9, at 269:5-25.

16 **II. CONCLUSION**

17 For the foregoing reasons, Defendants' Anti-SLAPP Motions should be denied on the
18 grounds of Cal. Code Civ. Proc. § 425.17 to ensure Facebook cannot further stay discovery and
19 jeopardize the trial date once again by appealing the Court's Order.

20 ²⁸ Dec., ¶ 2, Ex. 1, at 125:7-130:14, 268:6-272:4; ¶ 3, Ex. 2, at 188:23-189:15; ¶ 4, Ex. 3, at 14:25-
21 15:14, 21:23-22:2, 28:8-22, 40:14-41:14, 59:2-61:4, 65:3-25, 70:2-71:13, 82:8-94:1, 96:15-
22 108:16; ¶¶ 15-17, Exs. 14-16; ¶¶ 60-61, Exs. 59-60.

23 ²⁹ Dec., ¶ 3, Ex. 2, at 90:6-92:14; ¶ 4, Ex. 3, at 21:1-22, 53:22-54:17; ¶ 7, Ex. 6, 360:2-25; ¶ 9, Ex.
24 8, at 115-117; ¶ 10, Ex. 9, at 252.

25 ³⁰ Dec., ¶ 146, Ex. 145; ¶ 4, Ex. 3, at 35:2-23; ¶ 6, Ex. 5, at 22:17-23:12; ¶ 7, Ex. 6, at 45:4-21, 57:4-
26 63:5.

27 ³¹ Dec., ¶ 2, Ex. 1, at 204:12-209:16; ¶ 4, Ex. 3, at 14:25-15:14, 21:23-22:2, 28:8-22, 40:14-41:14,
28 59:2-61:4, 65:3-25, 70:2-71:13, 82:8-94:1, 96:15-108:16; Dec., ¶¶ 53-57, Exs. 52-56.

³² Dec., ¶ 8, Ex. 7, at 205:17-25; ¶ 10, Ex. 9, at 199:1-201:1, 252, 269:5-25.

1 DATED: May 18, 2018

GROSS & KLEIN LLP

BIRNBAUM & GODKIN, LLP

4 By: /s/ David. S. Godkin

5 Stuart G. Gross, Esq.

6 David S. Godkin (admitted *pro hac vice*)

7 James E. Kruzer (admitted *pro hac vice*)

8 Attorneys for Plaintiff

9 Six4Three, LLC

1 **PROOF OF SERVICE**

2 I, Cheryl A. McDuffee, declare:

3 I am a citizen of the United States and employed in Suffolk County, Massachusetts. I am
4 over the age of eighteen years and not a party to the within-entitled action. My business address
5 is 280 Summer Street, Boston, MA 02210. On May 18, 2018, I served a copy of the within
6 document(s):

7 **MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO**
8 **DEFENDANTS' SPECIAL MOTIONS TO STRIKE**

9 ☒ by electronic service, per the agreement of the parties, by emailing a true and
10 correct copy through counsel's email address to Defendant's counsel of record at
the email addresses set forth below.

11 Joshua H. Lerner (jlerner@durietangri.com)
12 Sonal N. Mehta (smehta@durietangri.com)
13 Laura Miller (lmiller@durietangri.com)
14 Catherine Kim (ckim@durietangri.com)
15 Durie Tangri (service-six4three@durietangri.com)
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16 San Francisco, CA 94111
17 P (415) 376 - 6427
Attorney for Defendant
FACEBOOK, INC.

18 and

19 Judge V. Raymond Swope (By hand)
20 Department 23
Complex Civil Litigation

21 I declare under penalty of perjury under the laws of the State of California that the above
22 is true and correct.

23 Executed May 18, 2018, at Boston, Massachusetts.

24
25 */s/ Cheryl A. McDuffee*

26 _____
27 Cheryl A. McDuffee
28

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22. compete! /7 restrict OR like OR spend OR limit OR remove
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29. like
30. app install ad

The Custodians are: Mark Zuckerberg, Sheryl Sandberg, Christopher Cox, Javier Olivan, Samuel Lessin, Dan Rose, Andrew Bosworth, Michael Vernal, Douglas Purdy, Ilya Sukhar, Justin Osofsky, Chris Daniels, Jackie Chang, Kevin Lacker, Bryan Klimt, David Poll, Eddie O'Neil, Simon Cross, Konstantinos Papamiltiadis, Allison Hendrix, Jenn Yunn, Ime Archibong, Rob Sherman, Matt Scutari, Erin Egan, Monika Bickert, Tera Randall, Jonny Thaw, Johanna Peace.

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Theodore Kramer <theodore.kramer@gmail.com>

Extensive evidence relevant to Facebook's data and privacy abuses

COLLINS, Damian <damian.collins.mp@parliament.uk>

Sat, Nov 3, 2018 at 12:28 PM

To: Theodore Kramer <theodore.kramer@gmail.com>

Cc: Damian Collins <damianntc@googlemail.com>

Dear Ted

Thank you so much for getting in touch about this. I have spoke with Carole about this and would really like to do anything I can to help on this very important issue.

Carole has suggested I write to you with the following request [see below] – can I just check with you directly that this is correct

I have also copied in here my private gmail and my UK mobile phone number is +447775947158

We are planning an international meeting of the select committee on 27th November and this could provide the perfect opportunity to explore the issues that you have been involved with

Best wishes

Damian

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Damian Collins

MP for Folkestone and Hythe

Chair of the Digital, Culture, Media and Sport Select Committee

T 020 7219 7072

www.damiancollins.com

From: Theodore Kramer <theodore.kramer@gmail.com>

Date: Monday, 1 October 2018 at 19:47

To: Damian Collins <damian.collins.mp@parliament.uk>

Subject: Extensive evidence relevant to Facebook's data and privacy abuses

Damian,

I've been following your leadership in the House of Commons Culture, Media and Sport Select Committee over the past year and have been extremely impressed with your passion for finding the truth with regards to Brexit, Cambridge Analytica, and Facebook's involvement in all of the above.

My company has been in litigation with Facebook and Mark Zuckerberg for three years and has obtained extensive discovery of communications between Zuckerberg and numerous other Facebook executives and employees regarding Facebook's treatment of user data and third party developers from 2007 to 2015.

Just recently, Carole Cadwalladr of The Guardian published two articles related to our case and what we have uncovered during discovery since we filed suit.

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I believe the information we have uncovered demonstrates clearly that Facebook violated the privacy of US citizens and its prior settlement with the FTC.

I have attempted to summarize the public information from our case below. I have also attached a summary of public information regarding the conduct and our most recent opposition filed in California State Superior Court.

Finally, I have attached a document that should assist you and your committee as you approach Facebook for documentation and evidence related to the company's handling of user data since January 1st, 2012. Carole recommended we send it to you.

I would really like to take the opportunity to talk to you about our case. Would you and your staff be open to a phone call?

Regards,

Ted Kramer

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We believe the evidence obtained in our ongoing litigation demonstrates that Zuckerberg architected a fraudulent scheme in mid-2012 in discussions with Chris Cox, Javier Olivan, Sheryl Sandberg, Dan Rose and Sam Lessin, among others. The purpose of the scheme was to weaponize friend data in order to unfairly boost Facebook's transition from desktop to mobile advertising and to wipe out competition in messaging, contact, photo, video and other consumer software markets. The scheme entailed Facebook entirely ignoring its policies and privacy settings on user data (particularly friend data) for organizations that provided revenues or other financial benefit to Facebook in

order to boost its user growth and mobile ad sales. We allege the scheme was communicated to senior Platform employees in October and November 2012, at which time they had planned a public announcement to remove friend data, but Zuckerberg directed them not to do so. Instead, from 2012 on, Zuckerberg used friend data maliciously as a stick to force companies to buy mobile ads to save Facebook's advertising business, which was not prepared for the transition from desktop computers to mobile phones. In other words, Zuckerberg tied the unrelated data and advertising products together in a malicious way. For companies who paid up in mobile ads, Zuckerberg didn't care what they did with the friend data. For companies who wouldn't pay for mobile ads or that Zuckerberg considered too competitive, Zuckerberg shut off their access to friend data even though Facebook made it available to all developers at the time. We have uncovered numerous instances of Facebook recognizing a policy violation related to user data and deciding not to enforce it in order to avoid interruption of purchases in its nascent mobile app install ads product.

Further, throughout this period from 2012 to 2015, Facebook never provided third party developers with any privacy settings when it passed user data. In other words, if Facebook knew that a user had set a photo for only "friends" to see, it refused to pass that information along to the third party developer notwithstanding that employees reported this "bug" for years. Thus, it was not even possible for Professor Kogan and Cambridge Analytica to determine how one of the quiz app's users wanted their data treated. That doesn't negate the wrongful conduct of Cambridge Analytica and others, but it does demonstrate that Facebook was the initially culpable actor here, not a third party. Facebook also deliberately took no further measures from 2012 to 2014 in order to make privacy controls around friend data more transparent and ubiquitous. This was not an accident. This was done deliberately to enable Zuckerberg to weaponize the friend data to boost partners who paid Facebook extraordinary sums in mobile advertisements that saved Facebook's advertising business in late 2012 and 2013. Facebook would not have the business it has today if Zuckerberg had not deliberately created the environment that Cambridge Analytica exploited. In sum, the Cambridge Analytica abuse was only possible because Zuckerberg became very desperate in mid/late 2012 to save his advertising business, which was collapsing due to the fact that people began using smartphones instead of computers.

Zuckerberg's scheme to arbitrarily enforce policies and friend data access based on mobile ad payments was concealed from most Facebook employees until very late 2013. Zuckerberg had begun working on a false privacy narrative for the scheme as early as 2012 and began testing it with employees in early 2013. The scheme was announced as Graph API 2.0 on April 30, 2014 with an entirely false privacy narrative (that the executives who implemented it self-consciously recognized as false) and which hid Facebook's decision to put a wall around its Platform behind the announcement of an unrelated project revamping Facebook's Login product. Interestingly, Facebook's original announcement removing friend data in April 2014 noted only that "several rarely used endpoints" were being removed. Internal emails show that these endpoints, including friend data, were the most widely used in Platform, contradicting Facebook's public claims. The fact that these endpoints were widely used appears obvious now in light of the fact that Cambridge Analytica used them to access data for 50 million consumers. Thus, Facebook's 2015 statement that the endpoints were "rarely used" is at best intentionally misleading.

Finally, we have alleged that Facebook engaged in almost a dozen projects after the FTC Order in which Facebook misled users regarding how their data was treated, ranging from commingling Onavo data with Facebook data prior to any update to the Onavo terms of service to the decision to track the texts and call logs of Android users without sign off from the privacy and legal departments at Facebook (and without updating the Facebook Android permissions) to deliberately ignoring privacy settings for a popular Facebook feature to Zuckerberg's repeated requests that when a user sets the privacy on a piece of data to "only me" that Facebook must make that setting "unsticky" to encourage users to share their data more broadly than they feel comfortable doing.

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Theodore Kramer <theodore.kramer@gmail.com>

Extensive evidence relevant to Facebook's data and privacy abuses

Theodore Kramer <theodore.kramer@gmail.com>

Sun, Nov 4, 2018 at 3:29 PM

To: damian.collins.mp@parliament.uk

Cc: damianntc@googlemail.com

Dear Mr. Collins,

Thanks for your note. I can confirm that your description of the documents in my possession is accurate. These documents are subject to confidentiality under a protective order entered in San Mateo Superior Court in California. Carole mentioned you may be seeking to subpoena the documents. I will agree to accept service of a subpoena mailed to my home address: 1267 Chestnut St., Apt 6, San Francisco, California 94109.

Upon receipt of any subpoena, I would be required to notify Facebook. If Facebook wishes to prevent my compliance, it will need to take action in appropriate fora.

If you wish to speak, it is best we setup a phone call with a conference line. We always have a member of our legal team on the line to ensure we have witnesses of what was discussed in the event Facebook takes retributive action against us.

My personal view is that the documents you list in your note contain information highly relevant to your investigation regarding Facebook's data practices, and further that it would be impossible for the investigation to reach any legitimate conclusions without a thorough review of this information.

Regards,

Ted

On Sat, Nov 3, 2018 at 12:28 PM COLLINS, Damian <damian.collins.mp@parliament.uk> wrote:

Dear Ted

Thank you so much for getting in touch about this. I have spoke with Carole about this and would really like to do anything I can to help on this very important issue.

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Damian Collins

MP for Folkestone and Hythe

Chair of the Digital, Culture, Media and Sport Select Committee

T 020 7219 7072

www.damiancollins.com

From: Theodore Kramer <theodore.kramer@gmail.com>
Date: Monday, 1 October 2018 at 19:47
To: Damian Collins <damian.collins.mp@parliament.uk>
Subject: Extensive evidence relevant to Facebook's data and privacy abuses

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I believe the information we have uncovered demonstrates clearly that Facebook violated the privacy of US citizens and its prior settlement with the FTC.

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Digital, Culture, Media and Sport Committee

House of Commons, London SW1A 0AA

Tel 020 7219 6120 Email cmscom@parliament.uk Website www.parliament.uk/cms

Mr Theodore Kramer
1267 Chestnut St.,
Apt 6, San Francisco,
California 94109
USA

6 November 2018

Dear Mr Kramer

The UK House of Commons Digital, Culture, Media and Sport Committee, of which I am Chair, would like to request several documents that we believe to be in your possession. They relate to the matter of Six4Three, LLC v. Facebook, Inc., filed on April 10, 2015 in California Superior Court, County of San Mateo (CIV533328). The following categories of documents have been deemed highly relevant to ongoing Committee investigations:

- Unredacted copy of Plaintiff Six4Three's Corrected Memorandum of Points and Authorities in Opposition to Defendants' Special Motions to Strike (Anti-SLAPP) filed on May 18, 2018;
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- Exhibits 1-212 to the Godkin Anti-SLAPP Declaration filed on May 18, 2018;
- All documents containing summaries or analyses of any of the exhibits to the Godkin Anti-SLAPP Declaration filed on May 18, 2018.

I should highlight that, if any disclosure of this material to the Committee has consequences in the US courts, the Committee cannot protect you. Committee proceedings are subject to parliamentary privilege in the United Kingdom under Article IX of the 1689 Bill of Rights, but this legislation does not have extraterritorial effect and could not be expected to be upheld in a US court.

Yours sincerely,

Damian Collins MP
Chair, Digital, Culture, Media and Sport Committee



Theodore Kramer <theodore.kramer@gmail.com>

FW: Letter from DCMS Committee

CHALLENGER, Chloe <CHALLENGERC@parliament.uk>

Tue, Nov 6, 2018 at 8:54 AM

To: "theodore.kramer@gmail.com" <theodore.kramer@gmail.com>

Cc: "WILLOWS, Josephine" <Willowsj@parliament.uk>, "Culture, Media & Sport Committee" <CMSCOM@parliament.uk>

Dear Mr Kramer

If I may introduce myself, I am Clerk of the Digital, Culture, Media and Sport Committee here in the UK House of Commons.

I am writing on behalf of the Chair, Damian Collins MP. I understand that Mr Collins has been in touch with you about documents in your possession that may be helpful to our Fake News inquiry.

Mr Collins has edited the early draft of the letter that you may have seen; the new version is attached. We plan to send this to you in the post tomorrow. Damian wished to say that we are happy to publish the letter if this would be of assistance. Please let me know what you think?

Best wishes,

Chloe

**Chloe Challenger**

Clerk | Digital, Culture, Media and Sport Committee | House of Commons | London SW1A 0AA

Tel: 020 7219 6120 | E-mail: challenderc@parliament.ukwww.parliament.uk/cms | [@CommonsCMS](https://twitter.com/CommonsCMS)

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Theodore Kramer <theodore.kramer@gmail.com>

Extensive evidence relevant to Facebook's data and privacy abuses

COLLINS, Damian <damian.collins.mp@parliament.uk>
To: Theodore Kramer <theodore.kramer@gmail.com>

Tue, Nov 13, 2018 at 10:13 AM

Ted

One other thought, following the email I sent to you earlier.

Would we be clear to publish what you have already sent us as written evidence without there being any repercussions for you? [Whilst we have immunity, you still need to consider your own position]

Also would there be any other documents you could give us which are unrestricted and might help to add to the story?

Best wishes

Damian

Damian Collins

MP for Folkestone and Hythe

Chair of the Digital, Culture, Media and Sport Select Committee

T 020 7219 7072

www.damiancollins.com

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--

We believe the evidence obtained in our ongoing litigation demonstrates that Zuckerberg architected a fraudulent scheme in mid-2012 in discussions with Chris Cox, Javier Olivan, Sheryl Sandberg, Dan Rose and Sam Lessin, among others. The purpose of the scheme was to weaponize friend data in order to unfairly boost Facebook's transition from desktop to mobile advertising and to wipe out competition in messaging, contact, photo, video and other consumer software markets. The scheme entailed Facebook entirely ignoring its policies and privacy settings on user data (particularly friend data) for organizations that provided revenues or other financial benefit to Facebook in order to boost its user growth and mobile ad sales. We allege the scheme was communicated to senior Platform employees in October and November 2012, at which time they had planned a public announcement to remove friend data, but Zuckerberg directed them not to do so. Instead, from 2012 on, Zuckerberg used friend data maliciously as a stick to force companies to buy mobile ads to save Facebook's advertising business, which was not prepared for the transition from desktop computers to mobile phones. In other words, Zuckerberg tied the unrelated data and advertising products together in a malicious way. For companies who paid up in mobile ads, Zuckerberg didn't care what they did with the friend data. For companies who wouldn't pay for mobile ads or that Zuckerberg considered too competitive, Zuckerberg shut off their access to friend data even though Facebook made it available to all developers at the time. We have uncovered numerous instances of Facebook recognizing a policy violation related to user data and deciding not to enforce it in order to avoid interruption of purchases in its nascent mobile app install ads product.

Further, throughout this period from 2012 to 2015, Facebook never provided third party developers with any privacy settings when it passed user data. In other words, if Facebook knew that a user had set a photo for only "friends" to see, it refused to pass that information along to the third party developer notwithstanding that employees reported this "bug" for years. Thus, it was not even possible for Professor Kogan and Cambridge Analytica to determine how one of the quiz app's users wanted their data treated. That doesn't negate the wrongful conduct of Cambridge Analytica and others, but it does demonstrate that Facebook was the initially culpable actor here, not a third party. Facebook also deliberately took no further measures from 2012 to 2014 in order to make privacy controls around friend data more transparent and ubiquitous. This was not an accident. This was done deliberately to enable Zuckerberg to weaponize the friend data to boost partners who paid Facebook extraordinary sums in mobile advertisements that saved Facebook's advertising business in late 2012 and 2013. Facebook would not have the business it has today if Zuckerberg had not deliberately created the environment that Cambridge Analytica exploited. In sum, the Cambridge Analytica abuse was only possible because Zuckerberg became very desperate in mid/late 2012 to save his advertising business, which was collapsing due to the fact that people began using smartphones instead of computers.

Zuckerberg's scheme to arbitrarily enforce policies and friend data access based on mobile ad payments was concealed from most Facebook employees until very late 2013. Zuckerberg had begun working on a false privacy narrative for the scheme as early as 2012 and began testing it with employees in early 2013. The scheme was announced as Graph API 2.0 on April 30, 2014 with an entirely false privacy narrative (that the executives who implemented it self-consciously recognized as false) and which hid Facebook's decision to put a wall around its Platform behind the announcement of an unrelated project revamping Facebook's Login product. Interestingly, Facebook's original announcement removing friend data in April 2014 noted only that "several rarely used endpoints" were being removed. Internal emails show that these endpoints, including friend data, were the most widely used in Platform, contradicting Facebook's public claims. The fact that these endpoints were widely used appears obvious now in light of the fact that Cambridge Analytica used them to access data for 50 million consumers. Thus, Facebook's 2015 statement that the endpoints were "rarely used" is at best intentionally misleading.

Finally, we have alleged that Facebook engaged in almost a dozen projects after the FTC Order in which Facebook misled users regarding how their data was treated, ranging from commingling Onavo data with Facebook data prior to any update to the Onavo terms of service to the decision to track the texts and call logs of Android users without sign off from the privacy and legal departments at Facebook (and without updating the Facebook Android permissions) to deliberately ignoring privacy settings for a popular Facebook feature to Zuckerberg's repeated requests that when a user sets the privacy on a piece of data to "only me" that Facebook must make that setting "unsticky" to encourage users to share their data more broadly than they feel comfortable doing.

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Digital, Culture, Media and Sport Committee

House of Commons, London SW1A 0AA

Tel 020 7219 6120 Email cmscom@parliament.uk Website www.parliament.uk/cms

Mr Theodore Kramer
London Marriott Hotel County Hall
Westminster Bridge Rd
London SE1 7PB

19th November 2018

Dear Mr Kramer,

Order for documents

The Digital, Culture, Media and Sport Committee has been given the power by the House of Commons under Standing Order No. 152(4) "to send for persons, papers and records". This includes the power to compel the production of papers by people within UK jurisdiction.

On Monday 19 November, the Committee made the following order (which will be published in its formal minutes in due course):

Ordered, That Mr Theodore Kramer submit the following documents to the DCMS Committee in relation to its inquiry into Disinformation and 'fake news', by 5pm on 20th November 2018:

Unredacted copies of Six4Three's opposition to the anti-SLAPP (strategic lawsuits against public participation) motion, filed in the California courts, relating to the company's dispute with Facebook, along with any documents or notes relating Six4Three's opposition to the anti-SLAPP motion.

We are requesting these documents because we believe that they contain information that is highly relevant to our ongoing investigation into disinformation and fake news. In particular, we are interested to know whether they can provide further insights to the committee about what senior executives at Facebook knew about concerns relating to Facebook users' data privacy, and developers' access to user data. The Committee's request is made for these reasons, and in no way suggests any support for the position of your organisation in its dispute with Facebook.

As noted in Erskine May's *Parliamentary Practice*: "there is no restriction on the power of committees to require the production of papers by private bodies or individuals provided that such papers are relevant to the committee's work as defined by its order of reference. [...] Solicitors have been ordered to produce papers relating to a client" (Erskine May, *Parliamentary Practice*, 24th edition, 2011, p.819.)

As Erskine May also notes: "Individuals have been held in contempt who [...] have disobeyed or frustrated committee orders for the production of papers" (p.839). Should you fail to comply with the order of the Committee and were found to be in contempt, you could face investigation and sanction by the House.

We require the documents by 5pm on Tuesday 20th November 2018. I look forward to your compliance with this Order.

Yours sincerely,

DAMIAN COLLINS MP

CHAIR, DIGITAL, CULTURE, MEDIA AND SPORT COMMITTEE



Digital, Culture, Media and Sport Committee

House of Commons, London SW1A 0AA

Tel 020 7219 6120 Email cmscom@parliament.uk Website www.parliament.uk/cms

19 November 2018

Extract from formal minutes of the Committee of 19 November 2018:

Ordered, That Mr Theodore Kramer submit the following documents to the DCMS Committee in relation to its inquiry into Disinformation and 'fake news', by 5pm on 20th November 2018:

Unredacted copies of Six4Three's opposition to the anti-SLAPP (strategic lawsuits against public participation) motion, filed in the California courts, relating to the company's dispute with Facebook, along with any documents or notes relating Six4Three's opposition to the anti-SLAPP motion.

DAMIAN COLLINS MP

CHAIR, DCMS COMMITTEE

Cheryl McDuffee

From: Carole Cadwalladr <carole.cadwalladr@guardian.co.uk>
To: Theodore Kramer; Carole Cadwalladr
Subject: Ted/Carole

DOCUMENT PRODUCED NATIVELY



Theodore Kramer <theodore.kramer@gmail.com>

Accepted: Ted/Carole @ Mon Nov 19, 2018 9am - 10:30am (PST) (Theodore Kramer)

Carole Cadwalladr <carole.cadwalladr@guardian.co.uk>
Reply-To: Carole Cadwalladr <carole.cadwalladr@guardian.co.uk>
To: theodore.kramer@gmail.com

Mon, Nov 19, 2018 at 12:01 AM

Carole Cadwalladr has accepted this invitation.**Ted/Carole**

When Mon Nov 19, 2018 9am – 10:30am Pacific Time - Los Angeles

Where London Marriott Hotel County Hall, London County Hall, Westminster Bridge Rd, South Bank, London SE1 7PB, UK ([map](#))

Calendar Theodore Kramer

Who

- Theodore Kramer - organizer
- carole_cadwalladr@hotmail.com
- Carole Cadwalladr

Invitation from [Google Calendar](#)

You are receiving this email at the account theodore.kramer@gmail.com because you are subscribed for invitation replies on calendar Theodore Kramer.

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Digital, Culture, Media and Sport Committee

House of Commons, London SW1A 0AA

Tel 020 7219 6120; Email: cmscom@parliament.uk; Website: www.parliament.uk/cms

Mr Theodore Kramer
London Marriott Hotel County Hall
Westminster Bridge Rd
London SE1 7PB

21 November 2018

Dear Mr Kramer,

Order for documents

I wrote to you on Monday 19 November to order documents under the Committee's power under Standing Order No. 152(4) "to send for persons, papers and records". This includes the power to compel the production of papers by people within UK jurisdiction.

As I said, on Monday 19 November, the Committee made the following order (which will be published in its formal minutes in due course):

Ordered, That Mr Theodore Kramer submit the following documents to the DCMS Committee in relation to its inquiry into Disinformation and 'fake news', by 5pm on 20th November 2018:

Unredacted copies of Six4Three's opposition to the anti-SLAPP (strategic lawsuits against public participation) motion, filed in the California courts, relating to the company's dispute with Facebook, along with any documents or notes relating Six4Three's opposition to the anti-SLAPP motion.

You did not comply with this order by the 5pm deadline and failed to supply us with a satisfactory reason for not doing so.

We are re-issuing the Order, with a deadline of 11am today. Should you fail to respond by this time it will be my duty to ask the Committee immediately to report this matter to the House of Commons, and request that it take action against you. As a result of failing to comply with an Order of the Committee you could be considered to be acting in contempt and face investigation and sanction by the House.

I have asked that the Serjeant at Arms, as warrant officer of the House, deliver this letter to you in person.

Yours sincerely,

DAMIAN COLLINS MP,
CHAIR, DIGITAL, CULTURE, MEDIA AND SPORT COMMITTEE



Digital, Culture, Media and Sport Committee

House of Commons, London SW1A 0AA

Tel 020 7219 6120; Email: cmscom@parliament.uk; Website: www.parliament.uk/cms

Mr Theodore Kramer
London Marriott Hotel County Hall
Westminster Bridge Rd
London SE1 7PB

21 November 2018

Dear Mr Kramer,

Order for documents

On Monday 19 November, the Committee made the following Order:

Ordered, That Mr Theodore Kramer submit the following documents to the DCMS Committee in relation to its inquiry into Disinformation and 'fake news', by 5pm on 20th November 2018:

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You did not comply with this order by the 5pm deadline, and failed to supply us with a satisfactory reason for not doing so.

I re-issued the Order on 20 November, with a deadline of 11am today. In the accompanying letter, I warned you that, should you fail to respond by the 11am deadline today, it would be my duty to ask the Committee immediately to report this matter to the House of Commons, and request that it take action against you. As a result of failing to comply with an Order of the Committee you could be considered to be acting in contempt and face investigation and sanction by the House.

The letter was delivered to you in person at 9am this morning by the Serjeant at Arms, as warrant officer of the House.

You again failed to comply.

As a result, the Committee met at 11am and formally ordered that I report your non-compliance to the House. I have taken this action, and reported your failure to comply to the House. This will appear on today's formal record, and the process of investigation will commence.

Yours sincerely,

**DAMIAN COLLINS MP,
CHAIR, DIGITAL, CULTURE, MEDIA AND SPORT COMMITTEE**



Digital, Culture, Media and Sport Committee

House of Commons, London SW1A 0AA

Tel 020 7219 6120; Email: cmscom@parliament.uk; Website: www.parliament.uk/cms

Mr Theodore Kramer
1267 Chestnut Street
Apt 6, San Francisco
California 94109

22 November 2018

Dear Mr Kramer

This letter confirms that Six4Three have provided the documents that the Committee ordered.

We are grateful for your compliance. The Committee does not propose to take any further steps in respect of any potential contempt of Parliament.

Yours sincerely,

DAMIAN COLLINS MP
CHAIR, DIGITAL, CULTURE, MEDIA AND SPORT COMMITTEE

**[Redacted Version of
Document Proposed to
be Filed under Seal]**

EXHIBIT 50

From: Thomas Scaramellino <thomas.scaramellino@gmail.com>
Sent time: 05/22/2018 11:31:58 AM
To: [REDACTED]@theguardian.com; [REDACTED]@mkslex.com
Cc: David Godkin; James Kruzer; Theodore Kramer <Theodore.Kramer@gmail.com>
Subject: Re: Follow up from call

[REDACTED]

On Tue, May 22, 2018 at 8:26 AM, Thomas Scaramellino <thomas.scaramellino@gmail.com> wrote:

Ted also mentioned you wanted to see the brief FB submitted claiming they are a media company and entitled to the first amendment protections of a publication that needs to make such editorial decisions about content. See attached. I've also included our brief on the timeliness issue for anti-SLAPP here.

Also, Ted would very, very much prefer to keep his name out of it at this point. Is it possible to describe the company/app without using any names specifically. I prefer the same. We would very much appreciate if the only name used is David Godkin, the lead counsel on the case, as part of his statement. Please let us know. We realize eventually that it would be naive to assume Ted's name won't get out, but he wants to properly set this up with his current employer in case the media picks up on it quickly. He needs to handle it responsibly, as would I. Appreciate any consideration you can provide on this. Thanks.

On Tue, May 22, 2018 at 8:14 AM, Thomas Scaramellino <thomas.scaramellino@gmail.com> wrote:
BACKGROUND | NON-ATTRIBUTION (EXCEPT WHERE OTHERWISE NOTED)

Hi all, following up on our call, please see the information you requested below. [REDACTED], pls pass along to [REDACTED] as I don't seem to have her email readily available. Keep us posted on plans and hoping we get a positive decision from the U.S. Guardian soon regarding filing a brief to make the evidence public. It is critical that we don't make this a huge story and then have no support helping us to fight back with the benefit of the evidence. It will create a very difficult environment for both Ted and the various attorneys working on this case. We will wait to hear from you on that front.

"We have no comment to the media at this time other than to say that we are opposing Facebook's efforts to seal certain evidence on July 2 before the San Mateo Superior Court because we believe the public has a right to see the evidence and are confident the evidence clearly demonstrates the truth of our allegations, and much more."

Legal background (source: [public docket](#) - this procedural history is all in the public docket online and that should be the source for it. certain public documents you asked for on call are attached here):

The case was first filed in April 2015, right as the Graph API 2.0 changes went into effect. The San Mateo County Superior Court has ruled that the developer has viable claims as to California's unfair competition law, various fraud and tort claims, as well as a breach of contract claim. When the judge ordered Facebook to produce key documents in late 2016, Facebook fired their first law firm, delaying the production by a number of months. Then, on the eve of their deadline to file any summary judgment motions in January 2017, Facebook without any basis removed the case to federal court to vacate the original May 2017 trial date only to have the case remanded back to state court just one month later. Unfortunately, California courts are so backed up that the next available trial date was not until April 2019 (two years after the original trial date and four years after the case was first filed). Then, in late 2017, days before Facebook was required by the court to produce certain Zuckerberg emails on December 7, 2017, Facebook filed an anti-SLAPP motion under California's SLAPP statute, which was enacted to eliminate frivolous lawsuits attempting to infringe on free speech rights in the first 60 days of a case. Facebook waited 1,000 days after the case began to file their anti-SLAPP motion, which papers in the case indicate is the latest filed anti-SLAPP motion on record in California. Then, after a hearing in which the judge indicated that Facebook's anti-SLAPP motion might be untimely, that same week Facebook used a rare provision in California law to disqualify the judge by attesting under penalty of perjury that she was prejudiced against Facebook, even though she had previously prevented the developer from adding Zuckerberg and others as defendants in the case. The developer was required to seek a writ of mandamus from a California appellate court, which reversed the lower court's decision and required the lower court to name Zuckerberg and five other executives as defendants in 2017. On July 2, the Court will determine if Facebook can continue to shield this evidence from public view in light of its clear relevance to getting to the bottom of Cambridge Analytica and a wide range of other reported privacy and monopoly issues related to Facebook's management of user data.

Further, even though it is public knowledge that Facebook published a [reciprocity policy](#) (see I.10) on [January 25, 2013](#), Facebook's lawyers for three years now have claimed in multiple verified discovery responses (under penalty of perjury) that Facebook *never* had a reciprocity policy and that there are no internal Facebook emails that contain the words "reciprocity policy," a rather remarkable claim in light of the fact that the announcement of this policy is a matter of public record and [easily verifiable on the Internet](#).

Facebook's aggressive delay tactics stalling this case for over three years may now be working against it, as the timing of a judge's decision to release documents on July 2 comes right as Facebook is trying to assure the public of its response to the Cambridge Analytica scandal. The public has a right to the evidence uncovered in this case as it is critical to this ongoing debate around digital privacy and monopoly, including the many ongoing investigations into Facebook's handling of user data. If Facebook's response to Cambridge Analytica is true, then why is Facebook trying so hard to prevent this information from coming to light if it would vindicate Facebook's statements to the media these past few months?

Ted's company, six4three (source: [public docket](#) - this information is all in briefs in the public docket)

Developer alleges that it was shut down based on Zuckerberg's fraudulent scheme decided upon in 2012 and that most all developers using Facebook Platform from 2012 on were living on borrowed time and all their investment of time and money was inevitably going

horse). Facebook no doubt will use its media influence to further malign the developer. It already appears to have done so. In March, a tech editor at Bloomberg published a piece that looked like it had been drafted directly by Facebook on the case without consulting Bloomberg's Facebook beat reporter or asking the developer for comment. That same week Bloomberg did an exclusive interview with Sheryl Sandberg. Hard to see how there wasn't a quid pro quo there.

The developer was a seed stage startup called six4Three (643). It was a computer vision technology that ultimately wanted to build a business identifying brands and clothing in photos for e-commerce and marketing purposes. Imagine if you could tap on a shirt in any photo on Facebook and buy it right away because the software automatically recognized the shirt. It was building up a photos database to train its algorithms and its early research showed that people were frustrated viewing photos on Facebook because it was hard to filter them to see the ones you want. So all this app did was put a filter on the photos you already had access to on Facebook to find the ones where your friends were having fun in the summer, at the beach, pool or on a boat, since research showed that this was what most people were using Facebook photos for anyway and so it could help the company train its algorithms to build its core products. The app took great care to respect user privacy and never violated it. Users could only see photos they could already see on Facebook. If Facebook took down an offensive photo, the app took it down as well. Unlike Cambridge Analytica,

own conduct, arguably the most anti-competitive and privacy-violating scheme in the history of software in terms of its impact on the broader economy, consumer choice, consumer control over data, and the ability to have a competitive consumer software market.

Questions we gave [REDACTED] for MPs:

What was the reciprocity policy? Why did Facebook implement the reciprocity policy and what did it require or prohibit? Did Facebook ever use the reciprocity policy to gain leverage over competitors or to force a company to buy advertising in order to continue to access APIs Facebook claimed were publicly available free of charge? Did you ever direct a Facebook employee to shut down a company under the reciprocity policy that had not violated user privacy or any other Facebook policy? What types of companies did the reciprocity policy apply to? What specific companies?

Did Facebook's APIs pass the privacy setting of a piece of data when transmitting that data to a third party? If I'm a third party accessing the friends photos API, for instance, in 2014, and the user has consented to having her friends access her photos in my app, would Facebook's API have also sent me all the privacy settings on those photos so I knew how to properly handle them and who could view them in my own app?

Did Facebook ever ignore privacy settings of a user for its own features in the Facebook app or on the Facebook website?

Facebook represented that a company did not have to buy advertisements in order to access the Platform APIs Facebook chose to make freely available to these third parties, correct? In light of this, did Facebook ever use its Platform APIs, particularly those that transmit user data, as leverage to force a company to buy advertisements?

It has been reported in the media that Facebook tracked the texts and calls of Android users in 2015 and 2016. Is that when this program to track calls and texts began? When did Facebook first start tracking these texts and calls? When Facebook first started tracking these texts and calls, did it obtain the approval of Facebook's privacy department? Did it update the Android permissions dialog to make clear in the dialog that this was a new set of permissions the user was granting?

Did Facebook ever use the texts and calls of Android users to create profiles of non-Facebook users, where Facebook would store this information about non-users to supplement its internal graph of social connections?

When Facebook announced [Graph API 2.0 on April 30, 2014](#), I noticed that there is only a single line at the bottom of the announcement that says "In addition to the above, we are removing several rarely used endpoints...." These endpoints were the ones that Professor Kogan and Cambridge Analytica had accessed, correct? So this includes all the APIs that transmitted friend data? How many APIs were in this category? Is it true that all of these APIs were "rarely used" at the time? How would you define "rarely used"? These APIs were first introduced in 2007, right, or at least by 2010? So most of these APIs had been around for at least four and up to seven years at this time, right? And how many developers relied on these APIs? So it seems like it's a pretty big change you're announcing here - is there a reason it was buried in a one line statement at the very end of an extremely long announcement?

BG003750